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The American University in Cairo
School of Global Affairs & Public Policy

**ON THE DEMAND TO INCORPORATE SHARI'A LAW INTO
UK LAW**

A Thesis Submitted to
The Department of Law

**in partial fulfillment of the requirements for
the degree of Master of Arts**

by Mayada Serageldin

June 2013

The American University in Cairo
School of Global Affairs & Public Policy
ON THE DEMAND TO INCORPORATE SHARIA INTO UK LAW

A Thesis Submitted by

Mayada Serageldin

Submitted to the Department of Law

June 2013

In partial fulfillment of the requirements for
The degree of Master of Arts
in International Human Rights Law has been approved by

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The American University in Cairo
School of Global Affairs and Public Policy
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ON THE DEMAND TO INCORPORATE SHARI'A LAW INTO UK LAW

Mayada Serageldin

Supervised by Professor Jason Beckett

ABSTRACT

The origin of this thesis lay in the emergence of a minority group of 'religious' activists in London, England. The purpose of this group was to establish "Shari'a Zones" in pockets of Waltham Forest and Tower Hamlets, wherein certain acts would be prohibited and Shari'a law would be enforced. This led to an examination of the theological and religious beliefs of this small and much marginalized section of the British Muslim community. What became apparent is that this group prescribed to a view of Islam, and shariah law in particular, which is incongruent with the provisions of human rights law. In complete contrast, as this thesis will explain, there are other interpretations of Shari'a law that are more complimentary to the tenets of human rights and civil liberties on which British society is based. This assertion should underscore how the principles of equality and justice are intrinsic to the Islamic faith. Having identified the above divergence in the representation of Islam by this sub-strata of British Muslims, this thesis will consider the British system within which this group and other Muslims operate. This is primarily done to get a general idea about how British Muslims are allowed and tolerated, by the system, to be as such. The conclusion reached is that these particular Muslims are not just portraying an inaccurate image of British Muslims, but they may well be practicing their religion wrongly. Thus, their conduct is counter-productive and their purpose is self-defeating.

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I. Introduction:

What it is:

Come late July 2011, residents of the London boroughs of Waltham Forest, Tower Hamlets and Newham started noticing yellow posters around the neighborhood announcing the Shari'a law enforcement zones.¹ The posters read as follows:

*You are now entering a Shari'a Controlled Zone | Islamic Rules
Enforced: No Alcohol, No Gambling, No Music or Concerts, No Porn
or Prostitution, No Drugs or Smoking | "Shariah" A Better Society.*²

Members of one British Islamic group had perimetered certain neighborhoods in London with posters marking Shari'a-controlled zones: where certain acts and behaviors were declared intolerable by Muslim residents, and punishable by Islamic Law.³ At the end of the stretch, the project is designed as a building block towards an Islamic Caliphate; historically seen as the ideal representation of unity in Islam.⁴ In its details, however, it stands at a fascinating contrast with the surrounding society and governing system. Furthermore, the project is designed to prove how Shari'a can provide and safeguard for a *better* society in attempt to push for its incorporation in UK law.⁵

The main question to be discussed in the course of this paper is the viability of the demand to incorporate Shari'a law in the British legal system; from the lens of both international human rights law and Shari'a law. Such viability can be determined after an understanding of the perceptions of good in confrontation: the British society (protected by UK law), the provided interpretation of Shari'a, and its compatibility with international human rights law (highlighted in the five indivisible rights). The compatibility between Shari'a and human rights is empirical to the evaluation of the demand for several reasons. For one, UK law and human rights law have gone hand-in-hand for decades, seeing as the UK is a forefather of IHRL. Two, Shari'a has been subject to numerous interpretations that present radically differing perceptions of the good (ultimately, all leading to *heaven* but via different lifestyles). It is essential to

¹ Stephen Brown, 'Shari'a-Controlled Zones' Sweep UK, FrontPage Mag, July 29, 2011.

² Exhibit A

³ Soeren Kern, *Europe on Edge: Growth of Islamistan in Europe means No-Go Zones for Non-Muslims*, The Cutting Edge, August 28, 2011.

⁴ MATHIEU GUIDÈRE, HISTORICAL DICTIONARY OF ISLAMIC FUNDAMENTALISM, 67 (Jon Woronoff ed., Scarecrow Press 2012) (2012).

⁵ Hugh Muir, *Diary*, The Guardian, May 17, 2011, available at <http://www.guardian.co.uk/politics/2011/may/17/hugh-muir-diary-anjem-choudary>

understand the perception put forth by the Islamic group, even more so to contrast it with another, to get a full grip of the possible outcome of the amalgamation of the legal systems or lack thereof. Three, in the off chance of its incompatibility, it is equally important to understand how the application of such an interpretation would affect the enjoyment (or not) of human rights. As such, the viability of both the demand and the interpretation can be determined.

This paper will take a brief look at the history of this Islamic group, the ideological origins behind their project, and the possible manifestations and/or repercussions of its outcome. Part I of this paper will serve to strengthen the notion of an interconnection between the rights; as premises for the discussion of consequences later on. Part II will serve as a brief introduction of the group: their historical origins in UK and the ideological offensive at play within the society for the past decade. The following parts will contain an elaboration of two contrasting, and almost equally perfectionist, perceptions of the good: the Islamic Caliphate, projected by the non-secularist group, vis-à-vis the Secular state, promoted by secularist intellectuals and furthered by the UK government. The final part of this paper will entertain the hypothetical outcomes of this project, and their consequences; specifically in relation to the individual enjoyment of one's rights as governed by international human rights law.

II. The History

Al-Muhajiroun ("The Emigrants") movement was founded in 1996.⁶ Omar Bakri Muahmmad, its Syrian founder, global figurehead and *Ameer* ("Prince") until 2003, is an infamous Muslim cleric, author of many publications such as *The Road to Jannah* [Heaven], and *The Duty of Jihad between Mind and Text*.⁷ Recruitment for the group centered around university campuses, where students presented fertile soil for new ideas,⁸ and reportedly because they would be subject to identity crisis over not integrating well with British society.⁹ Between the years 2004 and 2006, the group suffered intellectual cracks that eventually broke it into two. Muhammed, followed by Anjem Choudary¹⁰, carried on with the UK-based Da'waa Network ("The Calling"),

⁶ Elie Issa, *A Profile of Syrian Jihadist Omar Bakri Muhammad*, JAMESTOWN FOUNDATION, December 21, 2012, at 1, available at www.jamestown.com/Omarbakrimuhammad

⁷ Sheikh Omar Bakri Muahmmad, IZHARUDEEN, 2012, available at <http://www.izharudeen.com/sheikh-omar-bakri-mohammed1.html>

⁸ HOME OFFICE, PREVENT STRATEGY, 13, available at <https://www.gov.uk/government/prevent-strategy-review.pdf> [hereinafter *Prevent*].

⁹ *Id.*, 18 and 22. Recruits notably targeted social outcasts, usually from conservative backgrounds that made it difficult to embrace adventurous college life.

¹⁰ Anjem Choudary is a British citizen of Pakistani descent, and now leader of the organization.

as *Al-Ghurabaa* (“The Strangers”) whilst other more involved parties took on overseas activities as part of the Jihad Network (“The Struggle”), as *Savior* (a.k.a. *Savior Sect*).¹¹ By end of 2006, both groups were proscribed by the Home Office, under the 2000 Terrorism Act for “glorifying terrorism.”¹² Shortly after the July 7 bombings of 2007, Muhammad fled to Beirut, and was sought as a suspect for the attacks; leaving Anjem Choudary to resurrect the platform of the disbanded group.¹³

According to several of his interviews, the platforms of *Al-Muhajiroun*, *Al-Ghurabaa* and *Islam4UK* (the reincarnation) are more or less the same. The group aims at the non-violent overthrowing of the UK government, its replacement with an Islamic state, from where they intend to continue with the Islamic domination of the world.¹⁴ The members reject “standard liberal democratic ideals such as equality and free speech,”¹⁵ and believe that their disbandment only serves to highlight the irony of the *illusion* of free speech proclaimed by hegemonious states like the UK.¹⁶ They portray the situation in the UK to be “limited, deficient [and] even dangerous,” as a direct result of the application of a man-made secular system of government.¹⁷ For them, Islam and Shari’a law are the solution to all society’s problems. Hence, the yellow posters end with “Shari’a | For a Better Society.”

Evidently to Michael Whine’s commentary on the 2006 ban, which had encompassed multiple organizations, a mere ban will not be effective.¹⁸ Whine¹⁹ highlighted the need for the consistent, universal and effective application of legal means, in order to ultimately put an end to the resurrection of different names.²⁰ By 2010, *Islam4UK* got proscribed as well, Home Security then Alan Johnson expressed concerns of alleged support to terrorism and terrorist attacks.²¹ Surely enough, the members resurfaced in the news months later, under the name of *Muslims Against*

¹¹ *Id.*

¹² *Id.* Alan Travis & Patrick Wintour, *Extremist Muslim Groups to be Banned*, The Guardian, February 16, 2006, available at <http://www.guardian.co.uk/uk/2006/feb/16/terrorism.immigrationpolicy>. Ellen Parker, *Implementation of the UK Terrorism Act 2006 - The Relationship Between Counterterrorism Law, Free Speech, and the Muslim Community in the UK versus the US*. 21 EMORY L. J. 711, 713 (2008)

¹³ *Muslims Cleric Omar Bakri Muhammad Arrested in Lebanon*, BBC, November 14, 2010, available at <http://www.bbc.co.uk/news/world-africa-11579274>.

¹⁴ CATHERINE ZARA RAYMOND, *AL MUHAJIROUN AND ISLAM4UK: THE GROUP BEHIND THE BAN*, 11-12 & 32, May 2010, available at <http://icsr.info/wpcontent/uploads/2012/10/1276697989CatherineZaraRaymondICSRPaper.pdf>

¹⁵ *Id.*, at 11.

¹⁶ *Id.*

¹⁷ *Id.*, at 17.

¹⁸ Michael Whine, *Will the Ban on Al Muhajiroun Successor Groups Work?* (Aug, 2006), available at <http://www.ict.org.il/Articles/tabid/66/Articleid/224/currentpage/10/Default.aspx>

¹⁹ Michael Whine is the Government and International Affairs Director at the Community Security Trust, and Defence and Group Relations Director at the Board of Deputies of British Jews.

²⁰ *Id.*

²¹ RAYMOND, *Supra* note 14, at 21.

Crusades.²² It was through this platform that the *Islamic Prevent* strategy and the Shari'a Zones were introduced to the British society, both as strong ideological retorting to the government's own strategies.²³ With the erection of the zones, and the announcement of an anti-Armistice day protest, current Home Secretary, Theresa May, approved the proscription of *MAC*.²⁴ Months later, members of the groups resurfaced in the news as *United Ummah* ("united nation").²⁵

The Ideological Offensive

With the continuing rise in levels of terrorism threats that accompanied the new millennium, major states, such as the United Kingdom, actively seek to protect its territory, citizens and overseas interests. As part of the new counter-terrorism strategy (CONTEST),²⁶ the United Kingdom's government launched a particular strategy in 2007, the Prevent Strategy,²⁷ as a precautionary policy to stop people from joining or supporting terrorism.

Having categorized the likelihood of a terrorist attack as "Severe",²⁸ CONTEST identified four factors that enable the growth of 'terrorist' groups: conflict and instability, aspects of modern technology, pervasive ideology, and radicalization.²⁹ In response to these identified factors, the UK government formulated a quadrupled approach to counter the affect of their spreading. CONTEST seeks to *Pursue* and stop terrorist attacks, *Prevent* and stop people from "becoming terrorist or supporting terrorism", *Protect* and strengthen its "protection against terrorist attacks", and *Prepare* to mitigate "the impact of a terrorist attack."³⁰ *Prevent* promised a more comprehensive approach towards dealing with threats of terrorism: including working closely with a wide range of institutions, prisons, schools and even

²² Dominic Casciani, *Muslims Against Crusades Banned by Theresa May*, BBC, November 10, 2011, available at <http://www.bbc.co.uk/news/uk-15678275>.

²³ Anjem Choudary, *Islamic Prevent*, May 30, 2011, available at http://www.anjem-choudary.com/Islamic_Prevent. [hereinafter *Islamic Prevent*].

²⁴ Casciani, *Supra* note 22.

²⁵ *London's US Embassy Demo: 22 Arrests Made*, BBC UK, December 2, 2011, available at <http://www.bbc.co.uk/news/uk-england-16006035>. *Arrests Made as United Ummah Demonstration Turns Violent at U.S. Embassy in London*, LIVELEAKS, December 2, 2011, available at http://www.liveleak.com/view?i=259_1322848814. Robert Spencer, *UK: 22 arrested as "United Ummah" protests "anti-Muslim drone strikes in Pakistan*, JIHAD WATCH, December 2, 2011, available at <http://www.jihadwatch.org/2011/12/uk-22-arrested-as-united-ummah-protests-anti-muslim-drone-strikes-in-pakistan.html>.

²⁶ Home Office, *CONTEST: The United Kingdom's Strategy for Counter Terrorism*, HM GOVERNMENT, at 5, available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97994/contest-summary.pdf [hereinafter *Contest*].

²⁷ PREVENT, *Supra* note 8.

²⁸ CONTEST, *Supra* note 26, at 5.

²⁹ *Id.*, at 4

³⁰ *Id.*, at 6

charities to address radicalization.³¹ *Prevent* further classified *drivers of radicalization*, to offer a more in-depth understanding of the characteristics of 'radicalized' people, their support pathways and participation forms.³²

Prevent was met with much concern from some United Kingdom Muslims; it was seen as a “fishy” project that held more evil than good, especially when it comes to the potential intervention into Islamic practice.³³ This was particularly associated with the touch points between *Pursue* and *Prevent*, which involved data collection from the police with regards to potentially radicalized individuals.³⁴ Not so long after, the new United Kingdom government did find flaws within the first draft of *Prevent*, thus, a reviewed version was announced in 2011.³⁵ Officials indicated the inherited programme confused two government policies: they sought to clarify in the new version that there is one policy to promote social integration, and a separate other to prevent terrorism and tackle extremist ideology.³⁶ In the published review of the policy, it was admitted that the “previous *Prevent* work has sometimes given the misleading impression that Muslim communicates as a whole are more 'vulnerable' to radicalization than other faith or ethnic groups.”³⁷ Additionally declared in the review, was the non-establishment of *Prevent* as a “means for covert spying on people or communities.”³⁸

Second drafts aside, *Prevent* was perceived as an *ideological offensive* the government was launching against the Muslim populace.³⁹ It was often interpreted as a sinister situation to force Muslims to “sell out” to Western societies and conform to the state’s preferable understanding or accepted version of Islam.⁴⁰ Consequently,

³¹ Jack Barclay, *The Extremist Reaction to the UK's Prevent Strategy* (Oct 2011), HUDSON INSTITUTE, <http://www.currenttrends.org/research/detail/the-extremist-reaction-to-the-uks-prevent-strategy>

³² PREVENT, *Supra* note 8, at 17. Radicalized people are often in search for identity; hence they embrace “terrorism” as a value system that appeals against their disadvantaged socially discriminated status. Their support pathways are social networks and/or movements that promote group bonding, indoctrination, and may include peer pressure.

³³ Barclay, *Supra* note 31.

³⁴ PREVENT, *Supra* note 8, at 31. Arun Kundnani, *Spooked! How Not to Prevent Violent Extremism*, INSTITUTE OF RACE RELATIONS 28-9 (Oct. 2009), <http://www.irr.org.uk/pdf2/spooked.pdf>. Vikram Dodd, *Government Anti-Terrorism Strategy ‘Spies’ on Innocent*, The Guardian, October 16, 2009, available at <http://www.guardian.co.uk/uk/2009/oct/16/anti-terrorism-strategy-spies-innocents>

³⁵ PREVENT, *Supra* note 8.

³⁶ *Id.*

³⁷ *Id.*, at 43

³⁸ *Id.*, at 32.

³⁹ PREVENT, *Supra* note 8, at 40. SAIED R. AMELI, SYED MOHAMMED MARANDI, SAMEERA AHMED, SEYFEDDIN KARA, AND ARZU MERALI, THE BRITISH MEDIA AND MUSLIM REPRESENTATION: THE IDEOLOGY OF DEMONISATION (2007), <http://www.ihrc.org.uk/file/1903718317.pdf>. KRISTIN ARCHICK, PAUL BELKIN, CHRISTOPHER M. BLANCHARD, CARL E. MIZ, MUSLIMS IN EUROPE: PROMOTING INTEGRATION AND COUNTERING EXTREMISM (September 7, 2011), <http://www.fas.org/sgp/crs/row/RL33166.pdf>

⁴⁰ Barclay, *Supra* note 31.

Choudary authored a 28-page pamphlet a few days before the announcement of the new and revised *Prevent*, explaining how it is a state tool to monitor its citizens and intervene in their cultural affairs, among other things.⁴¹ Through the *Islamic Prevent* strategy, the group expressed strong contempt towards the secular state; because it was, in fact, *secular*, which goes against their fundamental belief regarding systems of governance.⁴²

Choudary initiated the strategy by consolidating a Muslim's identity solely to Islam: "A Muslim cannot have any other identity that that of Al-Islam. He is a Muslim first and last."⁴³ By restricting the identity, Choudary effectively denounces all affiliation to the state. Affiliating with the state also risks abiding by *man-made* law; as opposed to Islamic law, which is also forbidden, as there is no substitute for the dictates of God via Islamic verses of Qur'an.⁴⁴ Therefore, notions of "secularism" and "democracy" are to be absolutely rejected as untrue and "against the basic tenets of Islam."⁴⁵ Understandably then, Muslims are to avoid taking part in the legislative authority: which issues man-made laws for the secular non-Muslim society.⁴⁶ Accordingly, Muslims are not allowed to join the British army or the police forces: since they are not affiliated with the state, they should not take part in its security forces or defend territory other than the "Muslim Land".⁴⁷ In keeping with the booklet, the possibility of fighting Muslims while on the army side of the conflict is an act of apostasy.⁴⁸

One provision continues to prohibit the existence of any bond between two other than Islam.⁴⁹ Thus, this perception effectively denounces all social ties with non-Muslims as well. This latter premise is further supported later on in provisions that prohibit the engagement with non-Muslims and the celebration of their secular/religious festivities, all of which are alien to the Islamic community.⁵⁰ Muslims are to reject *interfaith* and benefit only the Muslim community.⁵¹ In the event that some Muslims had been integrated with the non-Muslim community that they behave in a manner different than instigated by the booklet (namely by Shari'a),

⁴¹ IZHARUDEEN, *Supra* note 7. ISLAMIC PREVENT, *Supra* note 23.

⁴² ISLAMIC PREVENT, *Supra* note 23.

⁴³ *Id.*

⁴⁴ *Id.*, at 18-23.

⁴⁵ *Id.*

⁴⁶ *Id.*, at 26.

⁴⁷ *Id.*, at 16.

⁴⁸ *Id.*, at 8.

⁴⁹ *Id.*, at 10.

⁵⁰ *Id.*, at 24-25.

⁵¹ *Id.*, at 24.

they are to be *rehabilitated* into proper conduct, as there is no "freedom for a Muslim to behave as they please."⁵²

Towards the end of the pamphlet, Muslims are encouraged to promote these provisions set forth by the Islamist group, abide by it themselves and never dare to oppose its promulgation or execution.⁵³ To an extent, it introduces a shift from *right* to *duty* of being a Muslim, where it is part of one's Islam to promote the religion and the application of Islamic Shari'a law.⁵⁴

Evidently, members of *MAC* called on Muslims to boycott the non-Muslim society, to "stick to their own" in the hopes of creating a Muslim Emirate and self-govern.⁵⁵ Hence, lectures were held, speeches were given after Friday prayers; pamphlets were spread around town, all for the purpose of "exposing" the government's true intention behind *Prevent*.⁵⁶ In order to consolidate Islamic thought and avoid exposure to the westernized model, numerous UK Muslims confined themselves to certain neighborhoods, marked the neighborhood perimeter and announced the enforcement of Shari'a law within said boundaries.⁵⁷ Evidently, such area became ones where "The Muslim community will not tolerate drugs, alcohol, pornography, gambling, usury, free mixing between the sexes; the fruits, if you like, of Western civilization," as Choudhary told the Daily Star.⁵⁸ Since then, there has been strong demand for the application of Shari'a law as the governing law for the UK: explained as a necessity to achieve a uniform civil code, as well as a healthy, sin-free environment, where threats to national security are dealt with in a more effective manner.⁵⁹

⁵² *Id.*, at 27.

⁵³ *Id.*, at 26-28.

⁵⁴ *Id.*, at 29.

⁵⁵ IZHARUDEEN, *Supra* note 2

⁵⁶ Saqib Bukhari, *New Report Exposes British Government's Plan to Change Islam* (April 4, 2010), Available at <http://www.khilafah.com/index.php/analysis/europe/9143-new-report-exposes-british-governments-plan-to-change-islam>. HIZB UT-TAHRIR, *THE FUTURE FOR MUSLIMS IN BRITAIN*, <http://www.hizb.org.uk/solutions/report-the-future-for-muslims-in-britain>.

⁵⁷ Brown, *Supra* note 1.

⁵⁸ Dominik Lemanski, *Sharia law hits the UK*, THE DAILY STAR, (July 2011), available at <http://www.democracyforum.co.uk/immigration/96781-sharia-law-hits-uk-daily-star-sunday.html>

⁵⁹ Venky Vembu, *Let the Mullah rant on Sharia: We need a uniform civil code*, FIRSTSPOT (Feb 2012), <http://www.firstpost.com/politics/let-the-mullah-rant-on-sharia-we-need-a-uniform-civil-code-224839.html>

III. The Caliphate Ideal

What Dominic Gover described as "Muslim vigilantes battling to rid London of 'evil' drunks and prostitutes",⁶⁰ should be further understood with their 'radicalized' ideal in mind. The 'value system' in such an ideal goes beyond the mere failure of the police to deal with prostitution and drunkenness, as Gover reported off Choudary;⁶¹ It presents a perception of the good, while profoundly distinct from that of the "secular" state, is entrenched in ancient Islamic tradition.

In its origins, the project was designed to serve the Prophetic end of an Islamic world dominion.⁶² Given the literal interpretation of Anjem Choudhary, and before him Omar Bakri Mohammed, the world shall be ruled by Islamic governance.⁶³ Thus, they self-portray as one tool that would catalyze the process of this prophecy. By creating the Shari'a zones, they seek to initiate miniscule governorates adhering to rules of Islamic law, that would spread wide enough to join perimeters and create an Islamic *Caliphate*.⁶⁴ These emirates are envisioned to grow into full-fledged states that would come to unite the world under Islamic rule.

In its execution, the project is explained more in layman terms and a status quo requiring them to take on such a considerable stance. It was primarily devised as such to protect the rising numbers of Muslims in the UK (a significant 5% of the population) from the "satanic values of the British government."⁶⁵ Having to live in a society as diverse as the UK, under the auspices of a secular democracy had contained much hardship for these particular Muslims. In a diverse society, answering to a secular government with no Islamic reference, these Islamists lived in fear of losing their identity as devout Muslims. For them, like many others regardless of variations, Islam is a lifestyle; it is a rulebook to life and to one's affairs with God, himself, his family, and even with strangers.

This attitude is a direct application of Sayyid Qutb's research and interpretation of Islamic law and Shari'a. Where other Islamic thinkers will be

⁶⁰ Dominc Gover, *Anjem Choudary: Muslim Vigilantes Battling to Rid London of 'Evil' Drunks and Prostitutes*, INTERNATIONAL BUSINESS TIMES, January 23, 2013.

⁶¹ *Id.*

⁶² Anjem Choudary, *Eid Khutbah 2012: The Legacy of Islam in Britain* (August 19, 2012), available at http://www.anjem-choudary.com/Eid_Khutbah_2012_The_Legacy_of_Islam_in_Britain_by_Anjem_Choudary. Taj Hashmi, *Global Muslims' Double Jeopardy: Islamophobia and Globalization*, available at http://www.muslimsocieties.org/Vol_6_No_1_Global_Muslims_Double_Jeopardy.html.

⁶³ *Id.*

⁶⁴ Soeren Kern, *Britain's "Islamic Emirates Project"*, GATESTONE INSTITUTION, July 21, 2011.

⁶⁵ *Id.*

involved in this discussion, Qutb⁶⁶ (d. 1966) will remain a pillar in the understanding of this group's platform, means and end result, simply because of the strong impact his philosophy had on their project; which will be emphasized as the discussion continues. Islamic thinkers included in this discussion had contributed to the debate on Islam and state, and/or had (likewise to Qutb) critiqued contemporary Islamic schools of thought.

The Islamic Caliphate is the "ideal representation of unity in Islam."⁶⁷ The implementation of the Caliphate combines both theology and jurisprudence for the foundation of Islamic basis.⁶⁸ Qutb wrote elaborately on *al-wahdah al-kubra* ("the great unity"), what he coined as the ultimate goal for Muslims; to unite in solidarity under Islamic law as it effectively deals with law and provisions for worship, from which social relations are derived.⁶⁹

A Caliph, the ruler, is seen as the supreme political power that governs and guides people through all aspects of life in all Islamic territories, as instigated by Shari'a -Islamic law.⁷⁰ Islamic thinker Ali Abd al-Raziq⁷¹ (d. 1966) wrote on the existence of government in Islam, highlighting Islam as a religion and state.⁷² In response to many critiques, Abd el-Raziq explained:

What I do believe and what I have suggested in my book is that Islam is a legislative religion (*din tashri'i*), and the Shari'a impacts on all spheres of life... if the Muslims agreed that their government should be a Caliphate and viewed the Caliphate as the foremost system for their common welfare, then the Caliphate is a lawful Islamic government (*hukumah shar'iyyah*) and the people must be loyal to it.⁷³

Where Abd el-Raziq conditioned the Caliphate to conclude the 'agreement' of Muslims, Qutb propagated a more strict interpretation of the Islamic state. In his book, *Ma'alim Fi al-Tariq* (Milestones), Qutb makes a clear distinction between

⁶⁶ Sayyid Qutb was one of the most important figures in the development of the *Jihadi Salafi* ideology. Despite his humble origins, Qutb enjoyed both Western and Islamic education. Qutb's writings critiqued notions of reconciling Western ideas and Islamic ideals.

⁶⁷ GUIDÈRE, *Supra* note 4, at C.

⁶⁸ *Id.*

⁶⁹ SAYYED KHATTAB, *THE POWER OF SOVEREIGNTY: THE POLITICAL AND IDEOLOGICAL PHILOSOPHY OF SAYYID QUTB* 9 (Routledge 2006) (2005).

⁷⁰ GUIDÈRE, *Supra* note 4, at C.

⁷¹ Ali Abdel Raziq was an Egyptian scholar and a religious judge. His writings were seen as controversial for the methodology he applied in debating the role of religion and Islamic history with government and politics.

⁷² KHATTAB, *Supra* note 69, at 2.

⁷³ *Id.*, at 9-10.

hakimiyyah and *jahiliyya*.⁷⁴ The first is derived of the word *hukm*, coined by Qutb to express *authority* and *command*; thus *hakimiyyah* expresses *government*.⁷⁵ Qutb saw the entire universe as issued by God, the Creator, hence it is regulated by his rule, and that is 'visible' in the texts and the derived Shari'a.⁷⁶ As Sayed Khattab explained, *hakimiyyah* is the ordinance of a man's life, regardless of any gradual alterations and developments in man's life, it cannot change his "nature to another being".⁷⁷ Going back to the provisions set forth in the *Islamic Prevent*, Choudary insisted that a Muslim's only identity is Islam; where he cannot support nationalism, tribalism, or even "Britishness".⁷⁸

Hakimiyyah for Qutb stands as the crossroads between Islam and *Jahiliyya*; a term he used to describe any form of government that is non-Islamic, such as socialism, democracy and capitalism.⁷⁹ It was also used to describe the attitude of Muslims who transgress against the rule of Shari'a and the establishment of an Islamic state.⁸⁰ In fact, Qutb, along with other Islamic thinkers, promoted the strife against those Muslims.⁸¹ This divisionary attitude is promulgated by *Islamic Prevent*, which calls for the rehabilitation of Muslims "who have been affected by the western way of life."⁸²

While strongly so, Qutb was far from being the only Islamic thinker with this view in mind; Gad el-Haq⁸³ (d. 1996) had also propagated the wrongfulness in separating the religion and the state.⁸⁴ In his writings, he urged Muslims to follow Islamic law, or what Mohamed al-Nawawi⁸⁵ described as *Dustur* ("constitution"),⁸⁶ and to detach from the western example; where "English churchmen allowed for their own overpowerment."⁸⁷ Al-Nawawi (d. 1278) and Al-Qurtubi⁸⁸ (d. 1230) had agreed with the succession of *Al-Imamah* or *Al-Khilafah* to prophethood.⁸⁹ Both believed in

⁷⁴ *Id.*

⁷⁵ *Id.*, at 17.

⁷⁶ *Id.*, at 100.

⁷⁷ *Id.*, at 22.

⁷⁸ ISLAMIC PREVENT, *Supra* note 23, at 3-4.

⁷⁹ KHATTAB, *Supra* note 69, at 146-8.

⁸⁰ *Id.*, at 161.

⁸¹ *Id.*, at 13 and 15.

⁸² Islamic Prevent, *Supra* note 23, at 26.

⁸³ Gad El-Haq was an Egyptian jurist, Grand Mufti of Egypt in 1978, and Grand Imam of Al-Azhar from 1982-1996.

⁸⁴ KHATTAB, *Supra* note 69, at 15.

⁸⁵ Imam Nawawi was a scholar of *Fiqh* and *Hadiths* ("Prophet's sayings"). During his 45 years, he wrote many books on Islamic studies, collected and sourced 42 *hadiths*.

⁸⁶ KHATTAB, *Supra* note 69, at 13.

⁸⁷ *Id.*

⁸⁸ Imam Abu Abdullah Al-Qurtubi was a *Fiqh* scholar. Notably, his most prominent works was *Tafsir Al-Qurtubi*, an exclusive commentary of the Qur'an.

⁸⁹ KHATTAB, *Supra* note 69, at 13.

the natural order of a God-instigated law, to be adhered and furthered, and monitored, by one *imam* or *khalifa* ("caliph").⁹⁰ Thus the western example portrays the decentralization of authority into several elements, as opposed to being consolidated in one knowledgeable man, all of which are operating within a framework set by other mere "men". In the debate on man-made law and God-instigated provisions, Qutb presents a rather discernible argument:

If it be despicable for one to say, for instance, that the sun is an ancient reactionary (*raja'i*) creature and must be replaced by anew developed star! Or to say, man is an ancient reactionary creature and should be exchanged for another progressive creature capable to develop the earth! If these and others are despicable, it would be more despicable to say the same sayings in respect of God's law conveyed in the Qur'an, the final message of God to mankind.⁹¹

For Choudary, and the proponents of *Islamic Prevent*, Muslims should only abide by the Shari'a, they are not allowed to adhere to a system operating by man-made law.⁹² Seeing the strong impact Sayyid Qutb and other Islamic thinkers have on the restrictive interpretation of Islamic law by this group of Muslims, the outcome is seemingly incongruent with human rights law. Evidently, the provisions of *Islamic Prevent* stand at the other end of civil, political, economic, social and cultural rights as provided for by international law. The next chapter will offer other interpretations that are more compatible with universal human rights.

IV. On Congruency

This other perception of the good portrays Islam to be in congruency with human rights, such that it identifies with many features of democracy and steers away from the Islamization of constitutions. The first perception focuses entirely on the institution of the Caliphate, where the application of God's laws applies to all features of life, individual and political; aided by state tools centralized in the Caliph - seen as both a political and spiritual leader. Thus, religion and state are eternally intertwined. Contrastingly, this perception softly breaks down such ideology through a different interpretation of Shari'a and the objective of divine messages.

The discussion in the following paragraphs borrows from certain jurists from different times in Islamic history. The works of these jurists reflected significant

⁹⁰ *Id.*

⁹¹ *Id.*, at 22.

⁹² ISLAMIC PREVENT, *Supra* note 23, at 10-11.

contribution to certain Islamic theories and shaping Islamic rulings through independent reasoning; all which are more harmonious with the understanding and application of human rights law.

In an interview on BBC radio, Rachid Ghanouchi⁹³ explained that "a state is more Islamic, the more it has *justice* in it."⁹⁴ In justifying his residency in the UK for 20 years evading political prosecution in pre-revolution Tunisia, Ghanouchi explained, "I was going to a country ruled by a queen where people are not oppressed and where justice prevails."⁹⁵ As the head of the ruling political party, elected in post-revolution Tunisia, Ghanouchi believes the prevalence of justice to be the essential key to the true application of values in the Qur'an, as opposed to the literal reading of it as disseminated by other Islamists.⁹⁶

The conceptualization of justice as a key value in Islam dates back to Rifa'a Al-Tahtawi⁹⁷ (d. 1873), a renowned scholar and reformist during the Abbasid Caliphate in Egypt,⁹⁸ who identified the then-illness of the Muslim *Umma* to be the *lack of freedom*. After a five-year mission to Paris, Tahtawi returned to Egypt with a newfound appreciation for equity and justice.⁹⁹

The stipulation of the equality of all French citizens before the law "has great power in establishing justice, in helping the wronged and satisfying the poor by convincing them that they are great as far as legal proceedings are concerned," he commented in one manuscript.¹⁰⁰ In another publication, Tahtawi categorized *freedom* as fivefold: natural, behavioral, religious, civil and political.¹⁰¹ Where *natural* freedom originated with mankind (the right to have access to food and drink without overstepping that which belongs to others), *behavioral* freedom defines "commendable conduct and noble morals," which reflect individual integrity.¹⁰² *Religious* freedom lies in that of opinion and doctrine, conditioned to adhere to the principles of religion, the respect of which leads to *civil* freedom, as "the rights of a

⁹³ Sheikh Rachid Ghanouchi is a Tunisian leading and Islamist ideologue who sought refuge in Britain for 20 years as a result of political prosecution. Come the Arab Spring with the Tunisian Revolution in late 2010, Ghanouchi returned months later to revamp Ennahda movement –banned by Ben Ali.

⁹⁴ Mukul Devichand, *Rashid Ghanouchi on Britain, Islam and Liberal Democracy*, BBC, February 12, 2012.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Rifa'a Al-Tahtawi was a teacher and a scholar of Islamic law. Al-Tahtawi was the first Egyptian to grapple with the question of adjusting the Arab model with the Western one, while still providing Islamic legal answers to pending issues.

⁹⁸ MODERNIST ISLAM 1840-1940: A SOURCEBOOK 31 (Charles Kurzman ed., 2002) (2002). [hereinafter *Sourcebook*].

⁹⁹ *Id.*, at 32.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*, at 37.

¹⁰² *Id.*

city's residents and communities toward each other."¹⁰³ All these categories must be engaged in legitimate transactions, safeguarded by the state as the citizens' *political* freedom.¹⁰⁴

For Tahtawi, the foundation of these freedoms, through just and sound laws, creates a counterbalance between the two rights, that of the state and of the individual.¹⁰⁵ The restriction of people's freedoms, without legitimate reason, is considered "a denial of their recognized right of happiness."¹⁰⁶ On the premise that all humans were created with two eyes and two hands, Tahtawi's conclusion attributed their freedoms to their *equality*, and that was associated with *justice* and *benevolence*.¹⁰⁷ The absence of this justice and the freedom of each individual, he believed, was the illness that took over the Caliphate at the time, "when rulers reigned by whim, doing what they pleased, and the people had no way to oppose their rulers or defend the rulings of Shari'a."¹⁰⁸

Going back to Sayyid Qutb's distinction between *hakimiyya* and *jahiliyya*, the objective of the rulings of Shari'a, he perceived, to regulate the universe with all its ordinances. However, there is a strong counter movement to this school of thought. Al-Shatibi (d.1388) and Ibn Ashur (d. 1973),¹⁰⁹ for instance, agreed that the highest objective of all divine messages is to establish justice and realize peoples' interest, to guide reason and promote the values of religion.¹¹⁰ Furthering their concept of separation between religion and politics, Ghanouchi highlighted a distinction between two systems: *Mu'amalat* ("Dealings") and *Ibadat* ("Worship").¹¹¹ The latter is concerned with creed and values, which represent the more constant features of life,¹¹² where the primary orbit of religion is understood not to be the state apparatus, rather

¹⁰³ *Id.*

¹⁰⁴ *Id.*, at 32-33.

¹⁰⁵ *Id.*, at 38.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*, at 38-39.

¹⁰⁸ *Id.*, at 34.

¹⁰⁹ Abu Ishaq Al-Shatibi, *a.k.a.* Ibn Al-Shatibi was an Andalusian Sunni Islamic legal scholar. Ibn Al-Shatibi researched extensively on *Usul al-fiqh* and wrote mammoth books on the higher objectives of Islamic law and religious innovations.

Muhammad Al-Tahir Ibn Ashur, *a.k.a.* Ibn Ashur was an eminent figure in both the Islamic reform movement and the institution of the Tunisian *Ulama*. Ibn Ashur contributed many rich publications the fields of Islamic scholarship and Arabic literature.

¹¹⁰ RACHID GHANOUCHI, SECULARISM AND RELATIONS BETWEEN RELIGION AND THE STATE FROM THE PERSPECTIVE OF AL-NAHDHA PARTY (March 2, 2012), <http://anwaribrahimblog.com/2012/03/19/transcript-of-rachid-ghanouchis-speech-at-csid-tunisia-on-2-march-2012-on-secularism-and-relation-between-religion-and-the-state-from-the-perspective-of-the-en-nahdah-party/>.

¹¹¹ *Id.*

¹¹² *Id.*

personal convictions.¹¹³ In this sense, Islamic jurisprudence provides for answers to the big theological questions; and includes a guideline as to how acts of worship are performed. The former domain revolves around the general interest of the public, i.e. *maslaha*.¹¹⁴ According to Ghanouchi, this domain is by no means constant, on the contrary, it is ever evolving and adapting to new developments.¹¹⁵

Given Tahtawi's emphasis on equality of opinions, among other things, and his understanding of how Shari'a should be defended against 'whimsical' leaders, it is important to understand how the 'people', i.e. the *Umma*, have a say in matters. Asifa Quraishi¹¹⁶ explained Shari'a to be God's Law, "The *ideal* of how people should be in the world."¹¹⁷ Where she stipulates the inability of the original texts to provide for answers to "every single life and legal question," she explained the evolution of *fiqh* ("Islamic Jurisprudence") as a set of linguistic canons of construction, consensus and reasoning; developed by jurists to attempt to provide for *some* of the legal matters.¹¹⁸ Evidently, *fiqh* is not manifest in every aspect of life, and jurists cannot claim the absolute correctness of their reasoning as they concede to the possibility of their own fallibility.¹¹⁹ Thus, *fiqh* presents guidelines for worship and "commendable conduct" among people.

Islamic law is derived from two major sources: the divine revelation, Shari'a (commandment set forth by divine texts, or *wahy*), and *fiqh* (the product of human reasoning).¹²⁰ Shari'a provides for general directives, whereas *fiqh* is the tool through which legal answers to unprecedented issues are explored.¹²¹ Therefore, *fiqh* stands to be a "rational endeavor... a product of speculative reasoning, which does not command the same authority as Shari'a."¹²²

Jurists developed other tools to embrace societal and legal changes; one of which is *Ijma'* ("consensus") of the Muslim *Umma*. For Wael Hallaq¹²³, *ijma'* is the ultimate sanctioning authority which guaranteed the infallibility of positive legal

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ Asifa Quraishi-Landes is an esteemed professor of U.S. Constitutional and Islamic Law at the Wisconsin University Law School. She is a 2009 Carnegie Scholar and 2012 Guggenheim Fellow.

¹¹⁷ ASIFA QURAIISHI, WHO SAYS SHARI'A DEMANDS THE STONING OF WOMEN? A DESCRIPTION OF ISLAMIC LAW AND CONSTITUTIONALISM, 161 (2008), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1140204.

¹¹⁸ *Id.*, at 164.

¹¹⁹ *Id.*, at 165.

¹²⁰ Mohammad Hashim Kamali, *The Shari'a: Law as the Way of God*, VOICES OF ISLAM, 2007, at 157.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Wael B. Hallaq is a scholar of Islamic law and Islamic intellectual history. His teaching and research deal with the problematic epistemic ruptures generated by the onset of modernity.

rulings;¹²⁴ Jurists found evidence in both Qur'an and Sunna in support of the authoritativeness of *ijma'*.¹²⁵ Many jurists found evidence to support the Prophet's seeking of his companions' advice, their *shura* ("consultation"), provided his acknowledgement of the fallibility of his own reasoned opinions.¹²⁶ Hence, *ijma'*, as a source of Islamic law, mitigated the interruption of revelation with the Prophet's death; allowing for the formation of new solutions to arising problems.¹²⁷

Tahtawi and Ghanouchi both believed that neither *fiqh* nor *ijma'* can, however, guide farmers on progressive technology, or assist with exchange of commodities between merchants;¹²⁸ which compromises some of the features of Ghanouchi's second domain, *Mu'amalat*. They can provide for the behavioral guideline and values of Islam. As for civilizational matters, Tahtawi had stressed the highest form of freedom to be that of agriculture, industry and trade.¹²⁹ For those are the key operatives to *public benefit* and the civilizing factor for great nations.¹³⁰

Tahtawi was the first to call for a foreign-inspired political concept to be applied in a Muslim state; the multiparty system.¹³¹ Founded on the equality of all citizens, and their right to be represented in the political arena, Tahtawi believed it be the remedy to the failing Caliphate system.¹³² Obligating people with religious practice, Ghanouchi as leading to the promotion of *Munafiqin* ("Pretenders"), where people seemed to adhere to the Caliph's (usually religious) instructions, regardless of their own personal conviction.¹³³ The Islamizing of the constitution of a Caliphate meant the adoption of one school of thought, which would later reflect that Islam before the world, and "pluralism in this context [the multitude of Islamic thought schools] goes to the side, becoming a mere commentary."¹³⁴ Quraishi feared the repetition of such a module; for it would once again change the way people regard Islam and Islamic law.¹³⁵

Ghanouchi followed in Tahtawi's steps and offered the borrowing of one method of *Mu'amalat* from the west, in addition to the multiparty system; the electoral

¹²⁴ Wael B. Hallaq, *On the Authoritativeness of Sunni Consensus*, 18 IJMES 427 (2009).

¹²⁵ *Id.*

¹²⁶ GHANNOUCHI, *Supra* note 100.

¹²⁷ Mohammad Fadel, *Analogical Reasoning in Islamic Jurisprudence: A Study of the Juridical Principle of Qiyas by Ahmad Hasan*, 15 J.L. & Relig. 359, 359 (2001).

¹²⁸ GHANNOUCHI, *Supra* note 94. SOURCEBOOK, *Supra* note 98, at 38.

¹²⁹ SOURCEBOOK, *Supra* note 98, at 9.

¹³⁰ *Id.*

¹³¹ AZZAM TAMIMI, ISLAM AND DEMOCRACY FROM TAHTAWI TO GHANNOUCHI (2007), <http://tcs.sagepub.com/content/24/2/39>

¹³² SOURCEBOOK, *Supra* note 98.

¹³³ GHANNOUCHI, *Supra* note 100.

¹³⁴ QURAISHI, *Supra* note 117, at 176.

¹³⁵ *Id.*, at 177.

system.¹³⁶ Justified as the means to highlight the *occurrence* of *ijma'* and a successful way of representing the peoples' say in political and legislative matters.¹³⁷ An electoral system becomes a procedure that allows the multitude of citizens to show their consensus. Evidently, the state would be a neutral element, where its scope is limited to the *public domain*.¹³⁸

A true and efficient separation of religion and state is heavily based on the provision of both institutions to fulfill its purpose. The state is an actor, created out of a societal need for order and protection of its individuals; while religion is a divine message sent by the Creator to His potential followers to introduce them to the modes of worship. This perception of the good is meant to offer an alternative interpretation for those who wish to learn the difference between *Islam* and *Islamism*. Both perceptions were entertained to highlight, two examples of, the radically differing interpretations of Shari'a law. The Qutbian model represents a restrictive application of Shari'a; where adherents are more conservative in their own lifestyle and less merciful to and tolerable of others. Contrastingly, the Ghannouchi-Tahtawi approach to understanding Shari'a promotes equality among adherents, thus more tolerance. It does not restrain freedom or impose practice upon people. Nonetheless, both models are far from being exclusive defaults of 'good' and 'bad' interpretations; Shari'a has never ceased as subject of interpretation.

In the coming discussion, apostasy will serve as a brief examination of the widely differing approaches to legal questions via Shari'a. Furthermore, it will provide insight on policies instigated by states that have chosen to centralize their authority in the one ruler; more so, it will highlight certain underlying political goals that 'influence' the Islamic legal approach rulers undertake in dealing with apostasy. More often than not, their rulings are not without prejudice.

V. Invalidating Thoughts

Al-Ghazali defined apostasy (*ridda*) as the open declaration of an individual refuting their belief in God, and (despite attempts to subdue) persisting in disbelief.¹³⁹ The offender announces he is a non-believer after having been a Muslim, and in some cases, can urge others to follow suit; and as such, he denounces his relationship to the

¹³⁶ GHANNOUCHI, *Supra* note 100.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Frank Griffel, *Toleration and Exclusion: Al-Shāfi'ī and al-Ghazālī on the Treatment of Apostates*, 64 SOAS 339-354 (2001).

Muslim community. Apostasy is applicable only to Muslims; if non-Muslims convert to other faiths, they are said to have ‘changed religions’.¹⁴⁰

Islam was one of the earliest democracies constituted on earth, given the historical inclusion of *Ahl el-ra’i* (opinion leaders) through the practice of *shoura* with respective leaders of the Muslim world.¹⁴¹ While *shoura* is slightly different from democracy, in that it does not entail the rule of people by the people, it is coined as the “freedom to express views, exercised by the opinion leader only insofar as this does not affect any of the components of the religious doctrine or the cult.”¹⁴² Subsequently, this limitation prevents rising tension between Muslims, in and among themselves, or with non-Muslims; namely because Islam prohibits offense to others, and moderation in response to offense from others.¹⁴³ As such, the classification of offenders was identified.

On one side, some jurists asserted that Islam did not provide an earthly punishment for every violation believers commit.¹⁴⁴ Of the justifications, is the assertion of how people were created as mere witnesses of each other’s doing in this life.¹⁴⁵ Going back to the original texts and classical Islamic jurisprudence, there exists evidence to denote the permission of expression and more importantly, the repeated assurance of an afterlife punishment for *kufir* (“disbelief”), not an earthly one.¹⁴⁶

In classical Islamic jurisprudence, apostasy was punishable by death.¹⁴⁷ However, upon re-examination of the policy invoked by scholarly lawyers, who argued that apostasy was not a *hadd* (“restrictive ordinance”), a more lenient punishment was devised.¹⁴⁸ More modern schools of thought believed, when a Muslim is suspected then proven to have apostatized (i.e. denounced the oneness, or even the existence of God), they are declared as such before the public; and in most cases, a domestic court announces their ‘civil death’.¹⁴⁹ In other words, they are legally and socially announced as non-Muslims, and, therefore, all their relations to other Muslims are disconnected. For one, they are separated from their spouses by

¹⁴⁰ Maurits S. Berger, *Apostasy and Public Policy in Contemporary Egypt: An Evolution of Recent Cases from Egypt’s Highest Courts*, 25 HUM RIGHTS 720-740 (2003).

¹⁴¹ Bassem Tibi, *Islam and Modern Ideologies*, 18 INT J MIDDLE E STUD 15-29 (1986)

¹⁴² *Id.*

¹⁴³ Griffel, *Supra* note 139.

¹⁴⁴ Jawdat Said & Afra Jalabi, *Law, Religion and the Prophetic Method of Social Change*, 15 J LAW REL 83-150 (2000-1)

¹⁴⁵ Frank Griffel, *Moderation* 401-2 (2003) <http://www.al-qalam.org/EQ-3.pdf>

¹⁴⁶ *Id.*

¹⁴⁷ Rudolph Peters & Gert J.J. De Vries, *Apostasy in Islam*, 1 Die Welt des Islams 1-25 (1977)

¹⁴⁸ *Id.*

¹⁴⁹ Berger *supra* note 123.

force of law; and they are prohibited from entering into new marriages, even with a non-Muslim.¹⁵⁰ Furthermore, their blood ties with their children are considered non-existent, to and from whom they are prohibited from passing or receiving inheritance, or to and from any Muslim relative.¹⁵¹ Apostates are considered malicious influence hence they are excommunicated.¹⁵²

It is the Shafi'ite belief that apostasy is derived from the same legal positioning of hypocrisy (*nifaq*).¹⁵³ A hypocrite, contextually, is one who 'pretends' to be Muslim, to have faith in God and believe in all three messengers, as part of refuge in the Muslim community and protection from its wrath; such as the wars following the prophet's death.¹⁵⁴ On the basis of their secret disbelief and, hence, secret practice of non-Islamic rites, Al-Shafi'i deduced a definition and punishment for apostates. Where an unbeliever is one who had lost faith after being a Muslim, and has publicly declared this revelation, an apostate goes further to conclude omission or failure to repent (*istitaba*).¹⁵⁵ Therefore, it is pillared on the staging of faith where in fact, the heart conceals otherwise, since Islam puts great weight on the intention of a believer.¹⁵⁶

In sharp contrast, legal scholars, such as Cherif Bassiouni, argue that since intention is a significant, private and concealed notion, there is no determining whether a non-believer has actually repented or not.¹⁵⁷ In essence, they should be left to their own devices, in the hope that they will find their 'path to God' once more. Moreover, Bassiouni believes that putting a deadline on their *istitaba* may convince them into *nifaq* just to get away from capital or civil punishment.¹⁵⁸ A suspect of 'apostasy' should not be penalized for exercising his freedom of religion and belief.¹⁵⁹ On this thought, another Islamic school comes into the debate, the Postponers (*Murji'a*).

As a low-key jurisprudential school, the *Murji'a* were marginalized during the *Umayyad* dynasty for questioning the rules of God.¹⁶⁰ They believed in the postponement of a Muslim's punishment or reward (on their degree of faith) till the

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² Griffel *supra* note 145.

¹⁵³ Griffel *supra* note 145.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Peters & De Vries, *Supra* note 147.

¹⁵⁷ Hannum *et al.*, *Supra* note 135.

¹⁵⁸ *Id.*

¹⁵⁹ Peters & De Vries, *supra* note 147.

¹⁶⁰ J. Meric Pessagno, *The Murji'a, Iman and Abu Ubayd*, 95 J AM ORIENTAL SOC 382-394 (1975)

Day of Judgment.¹⁶¹ For one, they believed that “it was not possible for human beings to pass judgment over the status of another human being’s faith.”¹⁶² Secondly, they resorted to Qur’anic verses that warned sinners of grave punishment at the end of God’s decision.¹⁶³

Qutb's great unity and Tahtawi's freedoms come into play when whimsical leaders enjoy centralized authority, so much so that Shari'a becomes a political tool to dissolve the 'united' community.¹⁶⁴ One significant evidential issue would be the imposition on the right to freedom of expression when it comes to literary works that addressed the existence of God or Islam, or offered “too-liberal interpretations of the word of God.”¹⁶⁵ This censorship was justified as: socially, a restriction on liberal thinking prevented individual autonomy from climaxing into a loss of faith.¹⁶⁶ Socio-politically speaking, censorship was invoked to prevent heresy leading to the dissolution of the Muslim

When Shari’a failed to provide legitimate grounds for the criminalization and the punishment of apostasy, a third solution was to resort to foreign laws and incorporate them into domestic legal codes. The adoption of Public Policy is a relatively new concept in the legal systems of Muslim countries; Egypt, for one, only adopted it in the beginning of the 19th century.¹⁶⁷ This policy incorporates the “legal principles that are considered fundamental to a society, and which may not be contradicted, altered, or violated by any rules or laws of that same society.”¹⁶⁸ Basically, it is the legal tool through which state legislatures identify a crime and punishment – a crime that cannot be identified by means of another legal system, namely, Shari’a. This policy goes along with the underlying understanding of Article 10(2) of the European Convention on Human Rights; which subjects freedoms of expression (expressed in article 10(1)) to:

Formalities, conditions, restrictions or penalties as are prescribed by law... in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of

¹⁶¹ JAMAL J. ELIAS, ISLAM 46 (Taylor & Francis e-Library 2005) (1999)

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ Andrew R. Smith & Fadoua Loudiy, *Testing the Red Lines: On the Liberalization of Speech in Morocco*, 27 HUM RIGHTS QUART 1069-1119 (2005)

¹⁶⁵ Berger, *supra* note 140.

¹⁶⁶ M.M. Slaughter, *The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech*, 79 VA LAW REV 153-204.

¹⁶⁷ Berger *supra* note 140.

¹⁶⁸ *Id.*

others... for maintaining the authority and impartiality of the judiciary.¹⁶⁹

Under this policy, and the legitimized and, already, rationalized control over public opinion, several Muslim authors were apostatized during the 19th century.¹⁷⁰ Therefore, it appears that rulers are more concerned with carefully constructing legal webs to trap authors who promulgate intellectual ideas of which they do not approve. When Islamic law could be used to make that happen, Islamic law was applied. When its provisions could not punitively provide for the crime, public policy became more convenient.

Such differing interpretations offer a better understanding of the potential political use of Shari'a and Islamic legal codes to benefit some over others. More so, they offer a profound understanding of how radically different interpretations have become, and how strict and restrictive these interpretations can be. At the more radical end, some Muslims assume authority to execute punishment over others; and at the other, Muslims conceding to their humility as equal before God and their incapacity to judge others. One model offers justice and equality, whereas the other involves judgment and superiority. One involves decision made by one centralized figures, often adhering to single school of Islamic thought, that cannot be countered by 'the people', and another model more involving and tolerant of the plurality of interpretations of Islamic jurisprudence.

VI. The Amalgamation

The Islam propagated by adamant adherents to a restrictive interpretation disseminates a conception of Islam that reduces audience to *pro-Islam* and *anti-Islam*. Such non-accommodation of other varieties in *fiqh* sends out a clear message that Islam is a restrictive concept, unyielding and intolerant to any changes in the surrounding society, political era or intellectual movement. The discourse in the previous chapter was dedicated to support the separationist notion in Islam; that a state is Islamic where certain foundations are safeguarded by the state (justice and equality); not in its punitive and restrictive application of Shari'a. The following discourse will offer a more expansive understanding of Shari'a to explain the necessity of finding common grounds between the different schools of Islamic thought. Furthermore, this understanding will serve to find common grounds between

¹⁶⁹ European Convention on Human Rights and its Five Protocols art. 10, 1950, <http://www.hri.org/docs/ECHR50.html#C.Art10>

¹⁷⁰ Aslam Syed, *Viewing Islam through Dark Clouds*, 588 ANN AM ACAD POLIT SS 194-201 (2003).

Islamic law and international human rights law, and evidently, UK law. This particular perspective will become the bar against which the three scenarios will be evaluated.

Because classical *fiqh* was based on medieval societal settings, and because it only provides legal answer for legal issues, disparities arose between *Ulama* ("Islamic scholars") as they struggled to contextualize society in accordance with Islamic rule, or use the scientific jurisprudential rule of Islamic law as reference in dealing with the constantly changing surrounding society.¹⁷¹ With the arising differences in interpretation, and consequential lifestyles that Muslims from different schools led, some *Ulama* feared the loss of the common grounds that united the Muslim *Umma* under Islamic law and Shari'a.¹⁷² Al-Ghazali (d. 1111), followed by Ibn Al-Shatibi (1388), made a profound contribution to Islamic law by terming and specifying its main objectives and purpose, *Al-Maqasid* ("Goals").¹⁷³

Maqasid Al-Shari'a (sing. *maqsid*), simply explained, are the ultimate goals and main objectives or purposes of Islamic law.¹⁷⁴ Historically, the strongest critique of philosophers, theologians and jurists' observed arrival at partial and superficial knowledge, albeit using jurisprudential tools, was Imam Al-Ghazali¹⁷⁵; he believed the provided answers did not reach the "precinct of the heart and the soul."¹⁷⁶ Al-Ghazali perceived the highest form of wisdom and religious knowledge to go beyond the confines of this material world and embrace more the ultimate aim of Islam, which promises eternity in heaven.¹⁷⁷ The challenge he posed to intellectuals merely served to emphasize his argument against strict legal interpretation and reasoning of the original texts. For Al-Ghazali ratiocination applied to mathematically deduced rules and regulations failed to provide for the non-legal features of life on Earth, and what is to come in the afterlife.¹⁷⁸

Al-Ghazali's academic and legal writings are said to have contributed to the "cause of reason", evidently, he left behind a "neatly structured rational system of

¹⁷¹ MOHAMMAD HASHIM KAMALI, LAW AND ETHICS - THE ROLE OF MAQASID 26 (2009), <http://www.hashimkamali.com/index.php/publications/item/87-law-and-ethics-in-islam-the-role-of-the-maqasid>.

¹⁷² *Id.*, at 27.

¹⁷³ *Id.*

¹⁷⁴ AHMED AL-RAYSUNI, IMAM AL-SHATIBI'S THEORY OF THE HIGHER OBJECTIVES AND INTENTS OF ISLAMIC LAW, (Nancy Roberts trans. Islamic Book Trust 2006) (2005)

¹⁷⁵ Abu Hamid Al-Ghazali was a jurist and a theologian, and a scholar of Islamic jurisprudence. Through Sufism, Al-Ghazali contributed to the philosophization of Islamic theology; starting with the non-certainty of knowledge and revelatory truth.

¹⁷⁶ Hamid Algar, *Imam Abu Hamid Ghazali: An Exponent of Islam in its Totality*, 41 ISLAMIC STUDIES 537, 538 (2002).

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*, at 539.

meta-jurisprudence," where he introduced a new paradigmatic shift in the understanding of the objectives of Shari'a.¹⁷⁹ The part of concern of Al-Ghazali's meta-jurisprudence is his identification of five main objectives that are to be protected as "absolute priorities": faith, life, intellect, lineage and property.¹⁸⁰ Al-Ghazali wrote passionately on the concern of the *maqasid* discourse in relation to the "the values and realities of concern to the individual and the society."¹⁸¹ Years later, some jurists, such as Yusuf Al-Qaradawi added *freedom* and *human dignity* to Al-Ghazali's five.¹⁸² These five objectives will serve as the building block for the establishment of common grounds between Shari'a and human rights law in later paragraphs.

The aforementioned five main objectives were described as the ultimate goals that Shari'a seeks to protect and guide followers to achieve.¹⁸³ Al-Ghazali validated *Jihad* ("Sacred Struggle") to protect one's *faith*.¹⁸⁴ *Jihad* simply denotes the protective measures Muslims are allowed to take to protect their religion; however, the range of interpretation concerning the "protective" measure varies from one school to another.¹⁸⁵ A moderate view of *jihad* simply promotes the peaceful and non-aggressive protection of Islam through *da'wa*; in essence, fulfilling the Muslim's mission of justice.¹⁸⁶ A more fundamental interpretation of *jihad* entails a strong, solid and forceful protection.¹⁸⁷ *Qisas* ("Equal Retaliation") was emphasized by Al-Ghazali to establish the value of *life*; irrespective of religion or ethnicity.¹⁸⁸ Theft, adultery and alcohol-consumption are "punishable offences as they pose a threat to the immunity of private *property*, the well-being of a *family* and the integrity of the human *intellect*, respectively."¹⁸⁹ Not only so, but Shari'a, as Al-Ghazali wrote, promotes work and trade so individuals can earn their living; it provides for detailed family laws to protect, strengthen and safeguard the unity of the family.¹⁹⁰ These essential *maqasid* encompass the all-pervasive and central theme of Shari'a; hence all its laws are related to protect these benefits.¹⁹¹

On his part, Imam Ibn Al-Shatibi believed it was not enough for people to learn the *hukm* ("Injunction") of a legal issue; rather, it was all the more essential for

¹⁷⁹ *Id.*, at 538.

¹⁸⁰ Mohammad Hashim Kamali, *Issues in Legal Theory of Usul and Prospects for Reform*, 40 IIIT 5, 15 (2001)

¹⁸¹ *Id.*

¹⁸² KAMALI, *Supra* note 171, at 45.

¹⁸³ Mohammad Hashim Kamali, *Maqasid Al-Shari'a Made Simple*, 13 IIIT 1-26, 15 (2008)

¹⁸⁴ *Id.*

¹⁸⁵ GUIDÈRE, *Supra* note 4, at 186.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ KAMALI, *Supra* note 182, at 171.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

them to understand the *hikma* ("Wisdom and Purpose") behind it.¹⁹² Al-Shatibi believed it was the profound understanding of *hikma* was what allowed the Prophet's companions to rule remote provinces during the Islamic empire; they met the needs of the people because they fully grasped the purpose of Shari'a: equality and justice.¹⁹³ In his greatest publication, *Al-Muwafaqat* ("The Agreements"), *The Book of Higher Objectives*, was one volume of it, dedicated to explain the objectives of the law (both as briefly attempted by previous scholars, and expressly based on his research), presenting them as "a visible and recognizable entity; no longer could they be disregarded, forgotten or belittled."¹⁹⁴

For his fear over the dissolution of the Muslim *Umma*, Al-Shatibi had two goals to accomplish. He believed the concept of *Maqasid* would help keep the *Umma* intact through the establishment of a unified *corpus juris* of Shari'a, one that would integrate the varying visions and goals of the different interpretations by scholars and jurists.¹⁹⁵ In modern terms, this integrated code can be understood as a legal top-down approach to embrace the changes in the surrounding society and embrace the variations in interpretations, bearing in mind Quraishy's previous assertion regarding the fallibility of jurists. Al-Shatibi had another purpose, where he aimed to sensitize individual Muslims to the meaning of Shari'a, so that they can become "willing carriers of its values".¹⁹⁶ He believed that the "higher objectives of the Lawgiver can only be fulfilled by correcting the objectives of those answerable to the Law."¹⁹⁷ This presents a more bottom-up approach, where Muslims represent their religion (and way of life) with understanding and high awareness of the reasoning behind their actions, which would reflect upon their 'interfacing' and their relationship with the law of the land.

The contributions both imams, among others, have made to the Islamic jurisprudential system can be collated in Ahmed Al-Raysuni's words:

This is an entirely new step for the field of *usul al-fiqh* and its related writings; for while the higher objectives of the law were once no more than a specific point which might be mentioned or referred to on this or that occasion in the context of usual-related discussions, [Al-Shatibi] caused them to become a spirit which flows through most aspects of this discipline. This same spirit likewise flows with clarity

¹⁹² KAMALI, *Supra* note 182, at 24.

¹⁹³ *Id.*, at 25.

¹⁹⁴ AL-RAYSUNI, *Supra* 174 note, at 24.

¹⁹⁵ KAMALI, *Supra* 182 note, at 26.

¹⁹⁶ *Id.*, at 27.

¹⁹⁷ AL-RAYSUNI, *Supra* note 174, at 314.

and force through the discipline and world of jurisprudence by virtue of the fact that the objectives of the law have now been introduced into the realm of fiqh-related independent reasoning, whether for the purpose of understanding and interpreting a text and deriving rulings therefore, or for the purpose of arriving at a ruling on a situation about which no specific text exists.¹⁹⁸

The following part will examine a potential amalgamation between human rights law and Islamic jurisprudence. An essential part of this paper is concerned with finding an Islamic jurisprudential approach that is compatible with human rights. For one, it would answer the question of whether there exists one (or several) interpretation(s) of Shari'a that can go hand-in-hand with human rights law, and evidently with UK law. Secondly, and of more significant to main question, is whether the compatible approach mirrors the ideologies with which the Islamic group introduces the Shari'a zones project and their demand to incorporate Shari'a law. Consequently, the conclusion arrived at through the latter venture will conclude the viability of their demand. In the coming paragraphs, a brief and relevant background on human rights follow will precede its amalgamation between one perception of the good promulgated by Islamic jurists.

VII. The Indivisible Rights

After the end of the Cold War, several positive measures were taken in remedying the ideological barriers drawn out by the global political polarization; all to highlight the indivisibility of the two generations of rights. The most vital measure of which was the *Vienna Declaration and Programme of Action in 1993*, where Article 5 declared all human rights to be "universal, indivisible and interdependent and interrelated... [to be treated by communities] in a *fair* and *equal* manner, on the same footing, and with the same emphasis."¹⁹⁹ Article 5 also designated states as responsible to "promote and protect all human rights and fundamental freedoms,"²⁰⁰ *regardless* of their political, cultural and economic systems. In 1998, the UN Commission on Human Rights adopted several resolutions reaffirming "the universality, indivisibility, interdependence and interrelationship of all human rights... promoting and protecting one category of rights should therefore never

¹⁹⁸ AL-RAYSUNI, *Supra* note 174, at 26.

¹⁹⁹ UN General Assembly, Vienna Declaration and Programme of Action art. 5, Jul. 12, 1993, A/CONF.157/23.

²⁰⁰ *Id.*

exempt or excuse states from the promotion and protection of other rights."²⁰¹ The conceptual association becomes more emphatic: CPR & ESCR are to be thought of as- interchangeably- *indivisible, interdependent, interrelated* and *universal*. Moreover, human rights are to have *prima facie* priority over the "interests and desires of society and state."²⁰²

From a more on-the-ground consideration, the Peru's Truth and Reconciliation Committee (TRC) had pioneered an investigation that went beyond the mere listing of the "violations" and into the contextual reasons for their happening. Based on the TRC final report, the status quo allowing for the violations included social exclusion, racial and class lines, high death/killing rates in the poorest areas, unequal distribution of political and symbolic power, corrupt judicial mechanisms and disappearance from rural highlands.²⁰³ It was the conclusion of the TRC that the Peruvian government showed "profound lack of appreciation for the less privileged."²⁰⁴ An entire chapter was dedicated to report on the psychosocial, sociopolitical and socioeconomic harms at both personal and community levels.

The legal system of international human rights law seeks to protect the individual, sustain and develop their equal and inalienable right to a "good life": featured by equality, justice, enjoyment of rights and protection against violation or coercion.²⁰⁵ It is a rational and goal-oriented system that pursues a wide-scale level of conformity among citizens and states. Much of the same can be said about Shari'a; it too is a rational and goal-oriented system that promotes widespread conformity. And both contain restrictions against causal harm. The following paragraphs hold a comparison between Shari'a and human rights law. This paper relies on a limited number of Islamic jurists and scholars, simply because they were the most influential in the development of the following discourse. This does not go to say that they were the only ones supporting the strong correlation between both concepts.

With particular regard to this chapter and the last, several words comprise the *main* objectives, perhaps the *maqasid*, of both Shari'a and human rights law: justice,

²⁰¹ Mary Robinson, *Message from the High Commissioner for Human Rights*, in INTEGRATING HUMAN RIGHTS WITH SUSTAINABLE DEVELOPMENT, (Jan. 1998), available at http://www.hurilink.org/tools/UNDP_integrating_hr.pdf

²⁰² Jack Donnelly, *Human Rights, Democracy and Development*, 21 HRQ 608, (1999)

²⁰³ Lisa J. Laplante, *On the Indivisibility of Rights: Truth Commissions, Reparations, and the Right to Development*, 10 Yale Hum Rts. & Dev. L.J. 141, 153 (2007)

²⁰⁴ *Id.*, at 154

²⁰⁵ International Covenant on Civil and Political Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-20, 6 I.L.M. 368 (1967), 999 U.N.T.S. 171. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3. [hereinafter *Covenants*]

equality, freedom and public interest. The sequential ordering of those words, in and of itself, bears significance to the reasoning behind their establishment and protection.

The preambles of both ICCPR & ICESCR can be equated with the definition of *maqasid*; they set out the core aim of the conventions, which in itself represents a general and ultimate objective. The preambles start with an assertion of justice, among other things, as one of the fundamental achievements in the world along with freedom and peace.²⁰⁶ Justice is the primary requirement of an Islamic state, as Ghanouchi and Ibn Ashour had stipulated. It stands as the building block of a society where all individuals are on equal footing in terms of their relationship with the law. Al-Tahtawi was particularly impressed with the strong emphasis on justice in the French constitution of 1814:

Consider the first article: it has great power in establishing justice, in helping the wronged and satisfying the poor by convincing them that they are great as far as legal proceedings are concerned... What they [the French] hold dear and call liberty is what we [Arabs] call equity and justice, for to rule according to liberty means to establish equality through judgments and laws, so the ruler cannot wrong anybody, the law being the reference and the guide.²⁰⁷

Establishing justice, therefore, in the prescription of both Shari'a and human rights law, means the right of all citizens to fair treatment, and to the enjoyment of equal rights; in addition to the application of just laws upon wrongdoers without prejudice.

This equal setting denotes equal *rights*, the stipulation of the "inherent dignity of all the members of the human family,"²⁰⁸ and the equal protection of both; all of which is sought and promoted by both conventions and Shari'a. The equality of those rights is portrayed in the preambles as the foundation for justice.²⁰⁹ It was strongly highlighted by Al-Tahtawi's argument of equal setting since creation (two eyes/ears/hands for everyone), and the understanding of it was described by Ibn Al-Shatibi to be essential in meeting people's needs. Thus far, justice and equality in Shari'a correlate with civil and political human rights. An equal footing for all in voting, for example, reflects a civil freedom in their equality of choice, and political

²⁰⁶ Preamble: Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

²⁰⁷ SOURCEBOOK, *Supra* note 98.

²⁰⁸ COVENANTS, *Supra* note 205.

²⁰⁹ *Id.*

freedom for self-determination as stipulated in ICCPR: the people choose their representatives and share aloud their political choice.

The realization of people's needs through promoting their equal -and inalienable- rights evidently means, adhering to Al-Tahtawi's model, the realization and non-restriction of their right to happiness without probable cause. Thus, their freedom is not restrained. Although the conventions do not detail the term *freedom*, Al-Tahtawi's fivefold definition presents a perception that is harmonious with human rights law. Al-Tahtawi's *natural* freedom relates to the basic human rights as enshrined in the Universal Declaration: food, water & shelter;²¹⁰ it entails the right to *live*. Protecting this natural freedom can very well fall under the *maqsid* of *life*: states, Muslim states and/or ratifying to the conventions, are obligated to protect the people's lives and provide for their survival and safety- through a supportive welfare system for example.

His idea of *behavioral* freedom promoting commendable conduct can be associated with cultural rights; since both are manifestations of a particular set of beliefs that individuals act upon and are intimately related to their sense of identity i.e. his *intellect*. These three features are to be safeguarded by the state pursuant to observe and promote both *maqasid* and/or human rights law. Al-Tahtawi's *civil* freedom relates more so to *social* rights than civil rights. He explained civil freedom as if "the social community formed... joining together to honor each other's rights."²¹¹ Provided a state where justice and equality are well-established, and the people's freedoms are unrestrained. However, private enterprises exercise their freedom to the extent of arbitrary employment and termination. The state has to safeguard the equal opportunity of every citizen, and protect their identities against discrimination through regulations promoting the mutual respect of each party's rights, culture, social background and *intellect*.

Religion, *faith*, the freedom of doctrine: all understandably refer to one pivotal right to be preserved, promoted and protected by the state; under both Shari'a rule and human rights law. A just state where citizens enjoy equal rights, they are *free* to choose their religion and faith, they should be protected by the state without prejudice, and should have a mutual understanding and respect with those of different faiths. In this case, any acts of intolerance taken by the state are most likely to reflect upon and affect the existing mutual respect. A state could refuse to recognize a certain religion and deprive the people of enjoying their right to *faith*.

²¹⁰ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948).

²¹¹ SOURCEBOOK, *Supra* note 98, at 8

Al-Tahtawi coined the term *political* freedom to refer to the state tools through which people are assured of their legitimate and recognized *property*; i.e. citizens engaging in legitimate transactions concerning their personal property are guaranteed its protection by the state. This understanding is different from the contemporary understanding of *political* freedom. For one, it draws upon the nature of the relationship between state and citizen then and there; 19th century Arab world - political participation took a different form, *shura*. This consultation mirrored a small-scale form of political participation where the Prophet sought *reasonable* advice from his companions when revelations did not provide for specific instructions. Therefore, *shura* as a principle, at the time, reflect an appreciation of individuals and their intellect and opinion; both of which the contributors held ownership to and expressed freely.

Noteworthy to highlight the mention of *property* in both conventions; article 2(1) for instance:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²¹²

In this and other references throughout the conventions, property is presented as a potential basis for discrimination; not as a right, or *maqsid*, that should be protected by the state. Contrastingly, it is distinguished in Shari'a, whether in Al-Tahtawi's model²¹³, or Al-Ghazali's coining of *maqasid*, as an entity that states are obligated to protect in the pursuit of people's right to happiness, and the state's own fulfillment of political freedom. Evidently, property, as a *maqsid*, becomes the *hikma* behind banning consumption of alcohol (perceived as toxic material causing unreasonable behavior) and stealing - i.e. threats to it.

Freedom of *trade* was prioritized as having the greatest public benefit. Al-Tahtawi saw as an "art of governmental administration... [where] the greatest difficulty for the person who appreciates the benefits of these arts is to see these spheres restricted."²¹⁴ He believed a successful trade system, one that truly advances

²¹² COVENANTS, *Supra* note 205.

²¹³ SOURCEBOOK, *Supra* note 98, at 8.

²¹⁴ SOURCEBOOK, *Supra* note 98, at 9.

civilizations, is based on progressive civil education.²¹⁵ Education thus becomes the tool for expanding agricultural, trade and industrial spheres, impressing upon rulers the capability and qualifications of the people so they do not consider restraining their trade freedom.²¹⁶ This understanding parallels that of economic rights: in the free disposition of natural wealth as a right to all people and the equal opportunity for all to be employed. The ICESCR, assuredly, contains more specific and contemporary guidelines that parallel the economic era.

In view of the above correlation, it becomes important to remind of a passing remark made earlier about Imam Yusuf Al-Qaradawi's initiative to add *human dignity* and *freedom* to al-Ghazali's fivefold *maqasid* of Shari'a.²¹⁷ Al-Tahtawi's model and Al-Qaradawi's conclusion serve to support the correlation between the notion of freedom prescribed by both Islamic Shari'a, in its modern interpretation, and human rights law.

Where foundations of equality and justice are prevalent in a state's legal code, the people are regarded as equal, and their enjoyment of all rights are safeguarded and promoted. When the people are allowed to be free, as per the aforementioned fivefold conception, their *needs* are realized. In Shari'a, the needs of the people, their welfare and benefit is coined as *maslaha* ("benefit").²¹⁸ Al-Ghazali impressed *maslaha* further as God's objective, His own *maqsid* in revealing Shari'a; precisely in the preservation of the fivefold *maqasid*. The concept of *maslaha* was developed by Al-Ghazali to arising and new cases that the scriptural sources do not address.²¹⁹ From then on, *maslaha* was researched as a notion to bring about legal reform: jurists researched the constitution of legally valid *masalih* and the tools to realize the people's needs and benefits.²²⁰ Jurist Ubayd Allah Sindhi (d.1944), identified with *maslaha* as tool for reform of *law* which is not eternal, and where *maqasid* and *hikma* advance the progression of *fiqh* that is more embrative of people's needs.²²¹ In essence, Shari'a and human rights agree on the course of realizing people's rights through tools that safeguard the public interest.

Shari'a and human rights law mirror not just the other's positive perceptions for the advancement of people's interest and the achievement of justice, equality and freedom. They also align on the restrictions inherent in both philosophies for the very

²¹⁵ *Id.*

²¹⁶ *Id.*

²¹⁷ KAMALI, *Supra* 171 note, at 26.

²¹⁸ Felicitas Opwis, *Maslaha in Contemporary Islamic Legal Theory*, 12 ISLAMIC LAW AND SOCIETY 182, 183 (2005)

²¹⁹ *Id.*, at 191.

²²⁰ *Id.*

²²¹ KAMALI, *Supra* note 171, at 25-26.

same objectives. Shari'a carriers and human rights law proponents share a call of awareness, the former willingly chooses to portray the principles of Shari'a for others to see; while the latter spread awareness and knowledge of the laws so people would embrace their underlying principles and promote their abidance. In essence, both parties willingly embrace the mission of *da'wa* and inviting people to learn more about the philosophy they promulgate. Similarly, this *da'wa* stops at being a calling; for neither philosophy encourage the use of coercion as a means to an end. Human rights law warns against coercion as it directly impairs any individual's freedom.²²² Rachid Ghanoushi had explained the adherence risk of coercion - the consequence of *pretenders*,²²³ whose personal conviction and *intellect* are sheathed by a façade of pretense that proves to be harmful for individual, society and faith.

The apostasy case evidenced Islam's strong emphasis on equality of all parties before each other, where no one is designated superior to others in a way to allow them to pass judgments on them. Islam provides no validation for inferiority in *mu'amalat* among adherents.²²⁴ The above has proved justice, equality and freedom in Islam to be global concepts that apply to *all*. This global application of the codes of Islamic law was the main derive behind Ibn Al-Shatibi's initiative to establish a unified code; so that it does not become arbitrary or stray away from the core objective and *hikma* behind it.²²⁵ In the same way, these concepts represent the foundation of *universal* human rights law that discriminate against no one culture, religion, sex, language, ethnicity, color, race or gender.

An examination of the correlation between Shari'a and human rights law is a pivotal stop towards the advancement of rights and the founding of justice, equality and freedom, and the realization of people's needs. A steer away from radical interpretations of Shari'a serves to understand the true and original *maqasid* and objectives Islam has to offer and its adherents should seek to achieve.

The next chapter will thoroughly examine the British system within which Muslims operate in order to contextualize the application of human rights in the state where certain Muslims call for the application of Shari'a in its most restrictive interpretation. An understanding of the extent to which UK law allows for the realization of their rights and needs as a religious minority will serve the evaluation of the scenarios to follow.

²²² COVENANTS, *Supra* note 209.

²²³ GHANNOUCHI, *Supra* note 94.

²²⁴ *Id.*

²²⁵ *Id.*

VIII. The UK System

To arrive at a fair (but somewhat personal) justification, or lack thereof, on the incorporation of Shari'a law into British law, it is necessary to take a passing look at the context: the legal and political systems and, evidently, the society. This enables us to have somewhat of an appreciation of the status of Muslims in the UK and the degree to which their co-existence is tolerated. Of course, this cannot be done without consideration of other religious minorities, or groups, within the same society. In terms of the bigger picture, this will help to determine the level of their achievement of their civil, political, economic, social and cultural rights.

Throughout its history, the English system went through several stages of development: among which are; the separation between the Church and the Prince's Magistrate in late 17th Century²²⁶, then *Toleration* in mid 18th Century²²⁷, followed by numerous Acts that reflect the ratification of international treaties and human rights law, especially in the past century. Family matters went from the jurisdiction of Ecclesiastical courts to becoming civil law.²²⁸ With the surge in religious groups and minorities, religious courts became authorized to focus on family affairs of marriages and divorces.

The past century has witnessed the most changes in the toleration phase of religious groups. One brief example would be the introduction of the Racial and Religious Hatred Act of 2006. In 1998, the London borough of Merton sought prosecution of a British National Party (BNP) member for anti-Muslim incitement, for campaigning against what he called "the Muslim problem". However, the prosecution request was "rejected on the grounds that Muslims were not covered by the Public Order Act."²²⁹ For several years, UK Muslims launched legislation campaigns for religious incitement.²³⁰ In mainstream media debates, this was considered a move to curb others' freedom of speech. However, the Muslims' side was significantly tipped

²²⁶ JOHN LOCKE, A LETTER CONCERNING TOLERATION, (Wildside Press LLC 2012) (1689). John Locke provided arguments why the Magistrate should not try to absorb too much of the Church's responsibilities for fear of misapplication or a negative Domino Effect on believers and non-believers equally.

²²⁷ GILLIAN DOUGLAS, NORAN DOW, SOPHIE GILLIAT-RAY, RUSSEL SANDBERG AND ASMAN KAN, SOCIAL COHESION AND CIVIL LAW: MARRIAGE, DIVORCE AND RELIGIOUS COURTS 13 (Jun. 2011), <http://www.law.cf.ac.uk/clr/Social%20Cohesion%20and%20Civil%20Law%20Full%20Report.pdf>

²²⁸ HON. JUSTICE MCFARLANE, 'AM I BOTHERED?': THE RELEVANCE OF RELIGIOUS COURTS TO A CIVIL JUDGE, (May 18, 2011), http://www.law.cf.ac.uk/clr/Hon.%20Mr%20Justice%20McFarlane_%20The%20Relevance%20of%20Religious%20Courts%20to%20a%20Civil%20Judge.pdf

²²⁹ Nasar Meer and Tariq Modood, *Islam and British multiculturalism* 9 GLOBAL DIALOGUE (2007). The Public Order Act is a parliamentary act that reduces rights and introduces punishment for anti-social behaviors.

²³⁰ COVENANTS, *Supra* note 205, at art. 21-22.

when other minorities, such as Sikhs, were mocked for *passing* as Arab-looking; in terms of appearance. Consequently, *incitement to religious hatred* was added as a criminal offence via the Racial and Religious Act of 2006.²³¹

A. Legal System

In its present status, English law encompasses several overlapping laws that *recognize* and *regulate* religious groups and individuals; where the laws of the Church of England, originally the most ancient and prevalent, are part of the general legal system, i.e. the law of the land.²³² The following overview will help to determine whether the legal framework of the UK provides for equality of all members of the community and the prevalence of justice among them.

In recognition, all religious groups are allowed to practice their religion the same as the Church of England.²³³ With the understanding that certain religions (such as Judaism & Islam) hold more significant guidelines on the conducting of family affairs, such as marriage and divorce, the state has created a contractual bond to give religious groups some legal standing to enforce "discipline[s] within their body which will be binding on those who, expressly or by implicating, have assented to them."²³⁴ This has come to be known as the doctrine of *Consensual Compact*.²³⁵ With this understanding, the rights granted by the Arbitration Act of 1996²³⁶ are applied to create religious courts; where Parties to a dispute should be "free to agree how their disputes are resolved."²³⁷ This act allows the parties to "make their own arrangements by agreement but provide rules which apply in the absence of such agreement... [where] it is immaterial whether or not the law applicable to the parties' agreement is the law of England and Wales."²³⁸ As a result of this act, religious groups, such as Orthodox Jews and Muslims, established religious courts to oversee and perform marriages, and rule on the validity of divorces.

The decisions of these courts are recognized and enforced by English courts;²³⁹ they are not subject to judicial review such as is the case for decisions by

²³¹ *Id.*, at 2. MEER, *Supra* note 229, at 6.

²³² DOUGLAS ET AL., *Supra* note 227, at 7.

²³³ COVENANTS, *Supra* note 205, at art.18.

²³⁴ RUSSELL SANDBER, *LAW AND RELIGION*, 73 (Cambridge University Press 2011) (2011).

²³⁵ *Id.*, at 72. "Religion in the United Kingdom is organized on a private basis: in short, the legal status of religious groups is similar to that of a sports club."

²³⁶ "An Act to restate and improve the law relating to arbitration pursuant to an arbitration agreement." Intro, 17th June 1996.

²³⁷ UK ARBITRATION ACT art. 1, 1996, <http://www.legislation.gov.uk/ukpga/1996/23/contents>

²³⁸ *Id.*, art. 3 and 4.

²³⁹ DOUGLAS ET AL., *Supra* note 227, at 18.

the Church of England.²⁴⁰ The religious laws applied by these courts are "free to operate where the law is silent."²⁴¹ Judges of the English courts have demonstrated several times their status towards decisions of the religious courts. Eady J held that "such disputes as arise between the followers of any given religious faith are often likely to involve doctrines or beliefs which do not readily lend themselves to the sort of resolution which is the normal function of a judicial tribunal."²⁴² Lord Hope pressed how "it has been long understood that it is not the business of the courts to intervene in matters of religion,"²⁴³ Munby J interpreted the recognition of religious courts to mean that "the starting point of the law is an essentially agnostic view of religious beliefs and a tolerant indulgence to religious and cultural diversity."²⁴⁴ Simon Brown J was presented with a case where the claimant requested the court to perform a judicial review of a Chief Rabbi's decision, Brown refused the matter on the basis that "there was no governmental interest in the decision-making power in question... the Chief Rabbi's functions are essentially to initiate spiritual and religious functions which the government *could not* and *would not* seek to discharge in his place were he to abdicate his regulatory responsibility."²⁴⁵

In regulation, certain mechanisms have been instigated by the state so that such courts and institutions register to acquire a legal status. The simple regulations are prescribed in acts that determine the courts be registered as a *place of worship*.²⁴⁶ The registered places are to be dedicated to certain functions, namely the *solemnization of marriages*²⁴⁷ and issuance of *religious* divorce. They could also be registered as a *Charity*²⁴⁸ for the purpose of the advancement of religion.

The more complex regulations are dual purpose; the first being the restriction of the courts' role to religious divorce. Seeing as both marriages and divorces must be registered at state civil institutions- alongside the religious rituals, divorce diverges to more legal consequences that are primarily dealt with by civil courts; such as child custody.²⁴⁹ Thus, religious courts, depending on their ritual, coordinate their divorce procedural along with the state's regulation: for Muslims, Shari'a courts require documentation of civil divorce to show for the parties' intention and certainty to seek

²⁴⁰ *Id.*, at 15.

²⁴¹ *Id.*, at 9.

²⁴² His Holiness Sant Baba Jeet Singh Maharaj v Eastern Media Group Ltd [2010] EWHC 1960

²⁴³ R v JFS Governing Body [2009] UKSC 15.

²⁴⁴ Sulaiman v Juffali [2002] 2 FCR 427

²⁴⁵ R v Chief Rabbi, [1992] 1 WLR 1036. LOCKE, *Supra* note 230, at 3.

²⁴⁶ Places of Worship Registration Act, 1855, <http://www.legislation.gov.uk/ukpga/Vict/18-19/81/contents>

²⁴⁷ Marriage Act, 1949, <http://www.legislation.gov.uk/ukpga/1994/34/contents>

²⁴⁸ Charities Act, 2006, <http://www.legislation.gov.uk/ukpga/2011/25/contents>

²⁴⁹ DOUGLAS ET AL., *Supra* note 227, at 16.

divorce in order to grant it; with Jews, the procedure set by the Beth Din courts goes the other way around.²⁵⁰

While civil courts are not authorized to perform judicial reviews to decisions by religious courts, the courts cannot enforce any decisions where there is "public policy which requires the court not to."²⁵¹ Like any contract, agreements to arbitrate necessarily have to show a *genuine* agreement to arbitrate by the parties.²⁵² Therefore, agreements obtained under *duress* or contracted with *minors* cannot be enforced under the British civil law.²⁵³ In some cultures, men will seek to marry young girls under the British legal age for marriage. Such marriage contracts are nullified by the state for the incapacity of the girl to be a party in the agreement.²⁵⁴ This can be seen as both a regulatory precaution and a limitation of the scope of the religious courts. Either way, these restrictions seem rightfully based on principles international human rights law.

The handling of divorces by civil courts is also an extension of the necessity of accordance with public policy. When acquiring a divorce, there are more considerations than just the ending of a relationship between two parties of a marriage. Ancillary matters relating to dowries, and more importantly, child custody are on the line. Despite the fact that certain religions provide guidelines on how to resolve such dilemmas, English courts are still the designated authority responsible to dissolve marriage and all existing legal ties in accordance with British law. Judge McFarlane was faced with one case where Muslim divorcing parents needed to settle custody of their child.²⁵⁵ Despite the consideration for religious laws, and that of expert statements, the Judge ruled to grant custody of the child to the parent who has provided the primary care for the son: in that case, the mother.²⁵⁶

In the English legal system, any dispute outside performance of marriage and divorce is one between the *Crown* and the *Defendant*, not between the parties. Disputes of domestic disturbance, or commercial nature that involve sanctions on either parties, even if ruled over by a religious court, will be invalidated by civil courts.²⁵⁷ One example is a case of two Iranian Jewish merchants who export Persian carpets.²⁵⁸ Where this case involved a breach of Iranian law, the Court of Appeal recognized the arbitration award but refused to enforce the contract on the grounds of

²⁵⁰ *Id.*

²⁵¹ *Kohn v Wagschal and Ors* [2007] EWCA Civ 1022.

²⁵² DOUGLAS ET AL., *Supra* note 227, at 17.

²⁵³ *Id.*

²⁵⁴ *Id.*

²⁵⁵ MCFARLANE, *Supra* note 228, at 15.

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Soleimany v Soleimany* [1999] QB 785.

its illegality.²⁵⁹ One party was in breach of a commercial contract, thus sanctions were to be pursued for his actions, thus the Beth Din court was recognized to have jurisdiction, but its decision remained invalid.²⁶⁰ Any court that attempts to enforce any physical punishment stands to be legally liable under English law.²⁶¹

Neither Muslim nor Jewish communities have a preset hierarchy of tribunals within their court system.²⁶² As such, there is no *appeal* process. However, and with specificity to Shari'a courts, the autonomous status *each* separate court enjoys, like many other institutions of arbitral nature, can sometimes be seen as giving much leeway for *forum shopping*.²⁶³ Parties can seek the opinion of a second Shari'a court if they disagree with the decision of the first one they sought. Moreover, the notion that Shari'a courts do not, separately, apply a specific school of thought (theoretically of the four main ones), can sometimes be seen as a shortcoming of the courts.²⁶⁴ However, all these of critiques can be generally applied to any arbitral institution as it does not possess the rigidity of legal courts, and tribunals are subject to apply the case law of the parties' choice.²⁶⁵

While some look at the Christian origins of the UK and maneuver that fact to reflect upon the intolerance of the state and its citizens, the aforementioned description, however brief, of the English legal system provides for the contrary. Furthermore, as political theory explains, the law of the land is a reflection of its society, and the society is but a reflection of its legal system. Parliamentary acts tend to produce legislation, which reflects the *attitudes* and *wishes* of the electing majority.²⁶⁶ And, although the UK is originally Christian, that does not mean that toleration is a concept that is alien to it. As Locke explained in his defense of the independence of the Church of England, "the business of true religion is quite another thing. It is not instituted in order to the erecting of an external pomp, nor to the obtaining of ecclesiastical dominion, nor to the exercising of compulsive force, but to

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ DOUGLAS ET AL., *Supra* note 227, at 18.

²⁶² *Id.*

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ LORD PHILLIPS, EQUALITY BEFORE THE LAW 3 (Jul. 13, 2008) <http://www.eastlondonmosque.org.uk/uploadedImage/pdf/LMC%20Lord%20Chief%20Justice%20booklet.pdf>. In later pages, we will discuss the "majority" wishes; Also, a far off example would be the segregation, and desegregation, phases of American history. When it was state policy to promote segregation, legal enforcements were inductive to social segregation of African Americans from the other races. Evidently, it was witnessed in housing, education, employment, transportation, and so on. One cumulative civil rights movement after another eventually turned public opinion against segregation and in time the state adapted, and came to assert desegregation through another set of legal changes that put an end to the social and institutional behavior resulting from previous legal settings.

the regulating of men's lives, according to the rules of virtue and piety."²⁶⁷ Based on which, he continued in later pages to explain how Christianity promotes toleration, "As for other practical opinions, though not absolutely free of all error, if they do not tend to establish a domination over others, or civil impunity to the Church... there can be no reason why they should not be tolerated."²⁶⁸

Lord Phillip's words seem most convenient to put the legal discussion in a nutshell, "British law has, comparatively recently, reached a stage of development in which a high premium is placed not merely on liberty, but on equality of all who live in this country. That law is secular. It does not attempt to enforce the standards of behavior that the Christian religion or any other religion expects. It is perhaps founded on one ethical principle that the Christian religion shares with most, if not all, other religions and that is that one should love one's neighbour. And so the law sets out to prevent behavior that harms others... A sin is not necessarily a crime."²⁶⁹

Even though Christian at heart and in origin, the legal system does not appear to discriminate against religious minorities or promote intolerance towards them. Quite the contrary, legislators have attempted to meet the needs of existing religious minorities *because* they are different; so that each group can better apply and abide by their religious rules and regulations; such as Orthodox Jews and Muslims, in matrimonial matters.

B. Civil-Political System & the Society

On the socio-political domain, which will pave the way for the civil, economic and cultural domains, it is important to keep in mind that law is a reflection of society, and that it is the framework through which the state induces changes in the society. On one angle, John Locke asserted that a government's legitimacy relies on the people's consensual agreement on its protection of their *-basics-* life, property and liberty.²⁷⁰ On the second angle, deep-rooted in British law are the provisions of International Human Rights Law, such as the Universal Declaration of Human Rights to begin with, where article 3 asserts everyone's right to life, liberty and security. On the third angle, Al-Ghazali interpreted *Maqasid Al-Shari'a*, the purpose and philosophy behind Islamic law, to be life, faith, intellect, lineage & property. In more modern studies, Youssef Al-Qaradwi, the Egyptian Islamic theologian, added freedom and human dignity.²⁷¹ In the space between this triangular operation of law and

²⁶⁷ LOCKE, *Supra* note 226, at 3.

²⁶⁸ *Id.*, at 36.

²⁶⁹ PHILLIPS, *Supra* note 262, at 7.

²⁷⁰ LOCKE, *Supra* note 226.

²⁷¹ KAMALI, *Supra* note 171, at 25-26.

philosophy, lie the Islamist groups of the United Kingdom seeking to execute the Shari'a project.

Each system provides support for the freedom of *faith* and *religion*. Each system seeks for the protection of *intellect* and *belief*. Consequentially, each system values the individual for what they are and what they believe in, and their right to their *life*, as a right of birth.²⁷² It does not become so far-out-of-reach to perceive all individuals as *equal*; in terms of their right to lead a life, follow their own belief system and receive protection from the state. Furthermore, it does not stand so erroneous as to perceive the systems themselves as equally influential on the individuals that adhere to them.

The incident against religious incitement mentioned before, signifies a certain level of intolerance that Muslims, and possibly other minorities, faced at a certain point in time as citizens (or immigrants) in the UK. One of the reasons why Muslims focused on rallies and movements was because they were not represented through mainstream media.²⁷³ This case was fairly recent, it took place in 1998, and the Religious Hatred Act was adjusted in 2006, it took effect in January 2007.²⁷⁴ One has to wonder why it took so long, and it consumed as much time as it took citizens to *accept* foreigners. For years, immigration was presented more as a concern than a plus. Ben Page²⁷⁵ placed the UK on a multicultural spectrum between France and the USA: France having *ignored* cultural differences, and the USA having been built on the idea of immigration.²⁷⁶ Perceivably, the UK is working its way away from France and closer to the USA; seeing as how US citizens are more *comfortable* with their differences.²⁷⁷ On its way to embracing cultural differences, the citizens were 'taken aback' by the high numbers of foreigners entering the country,²⁷⁸ and the media hub and its coverage of asylum migration waves in 2004.²⁷⁹ Between the years of 1999 to 2007, surveys showed increasing percentages of citizens concerns towards immigration.²⁸⁰ Contrastingly, the same surveys indicated the citizens' perception of the benefits of immigration and multiculturalism: opening up Britain to new cultures.²⁸¹ Despite the London bombings of 2005, surveys showed consistency with

²⁷² COVENANTS, *Supra* note 205, at art. 6

²⁷³ MEER, *Supra* note 229, at 3.

²⁷⁴ *Id.*, at 6.

²⁷⁵ Managing Director of Ipsos MORI Public Affairs and Chairman of its Social Research Institute.

²⁷⁶ BEN PAGE, BRITISH ATTITUDES TO IMMIGRATION IN THE 21ST CENTURY, 4 (2009),

<http://www.migrationpolicy.org/pubs/TCM-BritishPublicOpinion.pdf>

²⁷⁷ *Id.*, at 4.

²⁷⁸ *Id.*, at 3. In a survey conducted by Ipsos MORI, several subjects expressed how they felt "swamped" for the increasing numbers of foreigners in the streets.

²⁷⁹ *Id.*, at 7.

²⁸⁰ *Id.*, at 1.

²⁸¹ *Id.*, at 14.

regards to concerns and benefits. However, a new comment was provided, that *foreign-born* must *earn* their citizenship.²⁸² The concept of *earning* citizenship will be further dwelled upon during the evaluation of the demand to incorporate Shari'a law since it will serve then to look at the members of society promulgating this demand.

Another important parliamentary act worth mentioning is the Equality Act of 2010,²⁸³ which requires "public bodies and others carrying out public functions to consider in their day-to-day work the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations."²⁸⁴ This sets the legal, thus the political and civil, footing for *equality* of all citizens before the law, and consequently, before state institutions and acting bodies.²⁸⁵

C. Economic Equalization

The elevation in legal status, served to induce an equal, yet slower elevation in the economic and social status. On one side, Islamic banking has been taking strong leaps of growth in the past five years.²⁸⁶ The main feature of Islamic finance is the non-existence of profit, which is an unacceptable concept in most readings of Shari'a. In order to better accommodate and facilitate the lives of Muslims, the government provided for the establishment of Islamic banks.²⁸⁷

Moreover, the UK, being a "leading international financial centre"²⁸⁸, saw a spur in popularity of the Islamic banking system and came to appreciate its principles of *fairness, social justice, individual economic well-being, collective profit-sharing and loss-bearing, and economic prosperity*.²⁸⁹ The Islamic financial system meshed well with the London market's flexibility to embrace and adapt.²⁹⁰ As a result of English enterprises branching out in the Middle East, using the *Islamic Window* concept to promote its banking services, served to resonate in the English streets.²⁹¹

²⁸² *Id.*, at 21. To be discussed in further detail later.

²⁸³ COVENANTS, *Supra* note 205, at art 25.

²⁸⁴ DEPT. OF COMMUNITIES AND LOCAL GOVERNMENT, CREATING THE CONDITIONS FOR INTEGRATION, 6-7 (2012),

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/7504/2092103.pdf

[hereinafter *Communities*]

²⁸⁵ COVENANTS, *Supra* note 205, at art 2.

²⁸⁶ *Id.*, at art 3.

²⁸⁷ MICHAEL AINLEY, ALI MASHYAKHI, ROBERT HICKS, ARSHADUR RAHMAN, ALI RAVIALA, ISLAMIC FINANCE IN THE UK: REGULATIONS AND CHALLENGES, 3 (Nov. 2007),

http://www.fsa.gov.uk/pubs/other/islamic_finance.pdf.

²⁸⁸ *Id.*

²⁸⁹ *Id.*, at 4.

²⁹⁰ *Id.* COVENANTS, *Supra* note 205, at art. 2 and 4.

²⁹¹ AINLEY ET AL., *Supra* note 281, at 9.

From 2001 to 2007, the Financial Services Authority (FSA)²⁹² had worked to authorize Islamic financial institutions (three banks) and helped simplify the differences between the many banking systems in the UK.²⁹³ By 2005 and 2006, the Finance Act was introduced, and it placed the Islamic banking on the same tax footing of other, more global, banking systems.²⁹⁴ The government's framework for taxes and legislation has been paving the way for the introduction of new Islamic products such as insurance, bonds and mortgages.²⁹⁵

D. Socially Speaking

Among the cultural differences that Islam introduced to the UK, are polygamous marriages. English law stands firmly and persistently against bigamy and polygamy, Section 11(d) of the Matrimonial Causes Act of 1973 definitively voids marriage of such nature.²⁹⁶ Nonetheless, to embrace the social and cultural trends associated with Muslims, the state recognized polygamous marriages, if and when performed outside of the UK, in a state that allows for the occurrence of polygamous marriages, and where the wife applying for immigration seeks it in a capacity other than her being a spouse.²⁹⁷ It is worth mentioning that, up to 2007, the state has recognized over a 1000 polygamous marriage.²⁹⁸

Once spouses have become citizens of the state, and provided certain regulations concerning payments of insurance, they can apply to receive state pensions. As Chris Grayling explained,

For income-replacement benefits such as income support, income-based jobseeker's allowance and income-related employment and support allowance, the husband and the first wife claim as a couple. Subsequent wives receive an additional sum, which is less than the single person rate.²⁹⁹

²⁹² Established in 1997, introduced as the single financial regulator. It is a quasi-judicial institution responsible for the regulation of the industry of financial services in UK.

²⁹³ AINLEY ET AL., *Supra* note 281.

²⁹⁴ *Id.*, at 10.

²⁹⁵ *Id.*, at 30.

²⁹⁶ Matrimonial Causes Act, 1973, <http://www.legislation.gov.uk/ukpga/1973/18/contents>. COVENANTS, *Supra* note 205, at art 5. State recognizes as valid only monogamous marriages, which emphasize equality of both parties entering into marriage.

²⁹⁷ CATHERINE FAIRBAIRNE, POLYGAMY (Jul. 19, 2012), <http://www.parliament.uk/briefing-papers/sn05051>

²⁹⁸ *Id.*, at 13.

²⁹⁹ *Id.*, at 6.

It is also worth mentioning that, unlike other European countries, Muslim girls and women in the UK are at liberty to wear, or not, headscarves, or full-length *niqab*.³⁰⁰

E. Cultural Aspect

Appreciation of religious groups can be seen on the cultural level. A simple yet powerful example would be the slaughtering of animals. In 1995, the Welfare of Animals Regulations³⁰¹ were introduced in embracement of religious groups, namely Jews and Muslims, whose religions require certain procedure for the killing of animals for the purpose of feeding.³⁰² This would explain the *Halal* signs displayed by certain shops in the streets of London, signifying that all meats served were slaughtered in the merciful manner required by both religions.

In the month of *Ramadan*³⁰³, MP Jon Ashworth decided to fast for one day in order to have a deeper appreciation for the fasting he witnessed over 3000 Muslim athletes observe well during the Olympics of 2012.³⁰⁴ At the end of his experience he had this to say about it: "Islam is a religion, sadly often much misunderstood in the west and although my own experience was just for one day, I saw a religion which took pride in extending kindness, peace and understanding to those within the religion and those from outside."³⁰⁵

On a bigger scale, in 2011, the parliament enacted the Localism Act³⁰⁶, which now provides legal powers for all major local authorities to consider prayers as part of formal business meetings, seeing as faith plays a vital part in the nation's culture and heritage.³⁰⁷

F. Finally

All of the previous examples reflect the economic socio-cultural appreciations that the former Archbishop of Canterbury, followed by Lord Phillips, had attempted to understand and raise awareness on through two profound lectures promoting the understanding of Shari'a. In the turns of multiculturalism, Dr. Rowan Williams had attempted to dispel a few myths about Shari'a. He expressed concerns for Muslims

³⁰⁰ PAGE, *Supra* note 276.

³⁰¹ Welfare of Animals Regulations, 1995, <http://www.legislation.gov.uk/ukSI/1995/731/contents/made>.

³⁰² DOUGLAS ET AL., *Supra* note 227, at 11.

³⁰³ Holy month in Muslims' lunar calendar, when Muslims fast from all foods, drinks and sins from dusk to dawn.

³⁰⁴ Jon Ashworth, *Why I Spent A Day Fasting This Ramadan and What I Learnt*, HUFF POST, Aug. 20, 2012.

³⁰⁵ *Id.*

³⁰⁶ Localism Act, 2011 <http://www.legislation.gov.uk/ukpga/2011/20/contents>.

³⁰⁷ COMMUNITIES, *Supra* note 279, at 13.

within the society who might face difficulty with social integration.³⁰⁸ After thorough study of the religious system, Williams concluded that individuals can lead a life as abiding believers of the Shari'a without being in conflict with their rights, as guaranteed by English laws.³⁰⁹

Given the wider context of the British system, it appears that Sir John Donaldson words are highly accurate, that "the starting point of our domestic law is that every citizens has a right to do what he likes, unless restrained by the common law or by statute."³¹⁰ The law has gone through many changes along the years and it arrived to a successful point where "Muslim men and Muslim women are entitled to be treated in exactly the same way as all other men and women in the country."³¹¹ The law did develop and reformulate to focus not just on *liberty*, but also, on *equality*. While it seeks to prevent anti-social behavior, and actions that cause harm onto others, it regards all its citizens as equal.

Going back to Dr. Williams conclusion on Muslim citizens leading harmonious lives, and bearing in the back of our minds that the religion of this paper is international human rights, not Shari'a or British law, it seems clear that the legal pretext strongly provides for the achievement and satisfaction of Muslims' civil, political, economic, social and cultural rights as UK citizens.

IX. The Demand

Before evaluating the validity of the Demand, an understanding of the *why* behind it is in order. The discussion will then move towards the hypothesizing of possible three different scenarios in response to the demand of incorporating Shari'a law into British law. Notwithstanding, this is *not* a critique of the religion; it is a critique of the *Demand* and the possible advancements and/or consequences of each scenario in light of the amalgamation between human rights law and Shari'a.³¹² The status quo discussion entertained in the previous chapter was aimed at providing a grand picture of the society, to inform of how religious minorities are regarded in the eyes of the law, and how *much* freedom of religion and practice does the UK

³⁰⁸ Rowan Williams, *Civil and Religions Law in England: A Religious Perspective* (Feb 2008), available at, <http://rowanwilliams.archbishopofcanterbury.org/articles.php/1137/>. Dr. Williams hypothesized the possibility of having to live a dual-identity: one where the "Muslim" lives under guidelines that are all-encompassing, vis-à-vis the citizen where the secular state monopolizes public and political identity.

³⁰⁹ *Id.*

³¹⁰ COVENANTS, *Supra* note 205, at art. 2.

³¹¹ *Id.*, at 3. PHILLIPS, *Supra* note 263, at 2.

³¹² In light of *justice, equality, freedom* and *public interest* asserted as correlations between human rights law and *maqasid* of Shari'a.

government safeguard as a forefather/founding state of international human rights law. Based on which, the scenarios will be evaluated.

On the left side of the spectrum, Islam is interpreted as the operative framework for a patriarchal system, explained as the *default* and natural division of social roles assigned by God.³¹³ Perceived as a superior religion, in every aspect of life, leftists believe it cannot be *surpassed* by any other religion or ideology.³¹⁴ Thus the implementation of Shari'a, both civil and criminal codes, is not just the core of this school, it is the *default*. The evaluation of the principles and provisions called for is based on their portrayal in the *Islamic Prevent* booklet distributed starting May 2011, in protest of the previously discussed Prevent Strategy launched by the UK government.

This Demand was first brought about in 2009, when a group of Islamists introduced the Shari'a Zones project.³¹⁵ This group is not representative of the entire UK Muslim community;³¹⁶ however, they have declared it is their duty to *awaken* Muslims from the slumber and false peace brought about by western ideology.³¹⁷

According to one leader behind this Demand, there are four ways to achieve implementation of Islamic law: either via a collective Muslim rise in favor of it; or a strong Muslim lobby on foreign policy towards its implementation; collective choosing of a Shari'a-based system via elections; when all else fails, Muslims necessarily seek its implementation via conflict.³¹⁸ In the course of this paradigm,

³¹³ Anjem Choudhary website Anjem Choudary, *An Introduction to the Social System in Islam* (Aug. 2012), available at http://www.anjem-choudary.com/An_Introduction_to_the_Social_System_in_Islam. "Aisha cook for us, not Ali."

³¹⁴ *Id.*

³¹⁵ Kern, *Supra* note 3. Maryam Namazie, *Shari'a Controlled Zones in Britain are not Welcome* (Aug. 2011), available at <http://www.onelawforall.org.uk/sharia-controlled-zones-in-britain-are-notwelcome/>.

³¹⁶ Telephone Interview with *Sheikh Faruq Murad*, Secretary General of the Muslim Council of Britain (September 1, 2012). Interview with Dr. Kamal El-Helbawi, editor-in-chief for the Centre for International Policy Studies, and currently Chairman of the Global Civilizations Study Centre, in Cairo, Egypt (September 1, 2012), [hereinafter, *Interviews*]. Dr. Kamal El-Helbawy is an Egyptian professor and former *Muslim Brotherhood* member who settled in the UK in 1994, at the age of 34. He contributed to the creation of both the Muslim Council of Britain (MCB) and the Muslim Association of Britain (MAB) where he became the first president. He is currently the Chairman of the Centre for the Study of Terrorism (CFSOT) and an advisor for the Global Civilizations Study Centre (GCSC).

Farooq Murad is the founding member of the Muslim Council of Britain (MCB). Murad was elected as Secretary General in June 2010. In addition, Murad joined the Board of Trustees of Muslim Aid in 1998, became its General Secretary from 2002 to 2004 and has been Chairman since 2004. According to *Press TV*, Murad has been active in the youth and community development work in the UK for over two decades.

³¹⁷ Aaron Klein Interviewing Anjem Choudary (April 18, 2011), available at http://www.anjemchoudary.com/Aaron_Klein_Interviewing_Anjem [hereinafter *Klein Interview*].

³¹⁸ *Id.*

democracy and *freedom* are an *anathema* to Islam and Shari'a,³¹⁹ they are alienable concepts perceived as the fruits of Western ideological hegemony that tempt Muslims to relinquish their religion and cede their government to secularism, which is a form of corrupt man-made system incomparable with divine laws.³²⁰

Through the Shari'a Zones project, the Islamists group³²¹ seeks to establish safe neighborhoods where vigilante forces implement the rules set forth by their interpretation of Islamic law for many reasons. Firstly, they seek to prove to the rest of society that Islamic rules maintain safety and prevent unorthodox behavior associated with western practices such as gambling, prostitution and consumption of alcohol³²² that bring about moral destruction of society, and cause man to drift away from the divine paved roads to heaven.³²³ Secondly, the zones are a tool through which Islam can be welcomed and spread around the UK.³²⁴ In doing so, the group believes that the zones will expand the more people welcome and join Islam, and would seep into one another to create autonomous Islamic Emirates.³²⁵ By the same logic, these emirates will grow to devour the -then would be- smaller remaining areas.³²⁶ Evidently, Islam will be the leading religion of the country.³²⁷ That will also accomplish the establishment of the Islamic Caliphate system.

Essentially, implementing both civil and criminal codes of Shari'a would be a step towards realizing the Islamization of the UK. Life within the Shari'a Zones could help provide a picture of a society under one such application of Shari'a. To allow the surpassing of one religion over all others is not just to grant favor to that particular religion, it is also to concede to its dictates regarding the status of other religious minorities. Nonetheless, this discussion will entertain the advancements and/or repercussions foretold in this scenario, in light of international human rights law; i.e. as applied by the state, not the group. However, in this context, the supporters of this demand both spoken for and unannounced until the outcome is clearer; have to be distinguished from the general Muslim community.

³¹⁹ *Id.*

³²⁰ *Id.* PREVENT, *Supra* note 8, at 16.

³²¹ Same leadership, same members, under different names; as a consequence of consecutive banning: *Islam4UK, Muslims Against Crusades, United Ummah.*

³²² Exhibit A. Kern, *Supra* note 3.

³²³ Klein Interview, *Supra* note 317.

³²⁴ Kern, *Supra* note

³²⁵ *Id.*

³²⁶ *Id.*

³²⁷ *Id.* By the same derives and implementation, *Islam4UK* has encouraged the creation of *Islam4America*, *Islam4Hind* (India), *Hizb ut-Tahrir* (Party of Liberation) in Australia.

In several declarations by members of the group, non-Muslims were referred to as *kuffar*.³²⁸ In Arabic, *kufir* refers to the pitch-blackness of the night, and is used to refer to those of *no* religion; in English, it translates to *infidel*.³²⁹ When translated into "state attitude", there will be a clear-cut distinction between Muslims and non-Muslims. What is falsely attributed to *Islamic tolerance* is in fact, non-Islamic and intolerant. At the time of the Prophet -over 1400 years ago- Non-Muslims governed by Islamic rule were "allowed relatively tolerable conditions... Jews under the Ottoman Turks were often better off than Jews who lived under the European Christians... Christians, too, sometimes fled to Islam for religious tolerance."³³⁰ Then, they were referred to as *Dhimmis*;³³¹ they were asked to pay taxes, *jizya*, in return for state protection over life and property.³³² As such, non-Muslims were allowed to practice their religion; enjoy security provided for by the state; and conduct personal matters under the auspices of respective private laws, through churches, temples and so on.³³³ At the time, Jews were independent from the Shari'a law and sought legal/religious aid from *Halakha* courts.³³⁴ For all other religious affairs that involved restoring churches or building new ones, they had to acquire state approval;³³⁵ much like the aforementioned regulations set forth by English legal system. However, these Islamists have referred to non-Muslims as *kuffar*, equating them with people who disbelieve the existence of a God; who are still granted their freedom of belief in Islam.³³⁶

Furthermore, through the booklet, UK Muslims are *instructed* to boycott non-Muslims as part of their *overdue* rejection of *interfaith*: they should not have non-Muslim friends,³³⁷ or integrate in a non-Muslim society,³³⁸ including and not limited

³²⁸ Anjem Choudary, *What Every Muslim Should Know about the Evil of the Olympic Games* (August 1, 2012),

<http://www.anjemchoudary.com/WHAT EVERY MUSLIM SHOULD KNOW ABOUT THE EVIL OF THE OLYMPIC GAMES/Page-1>. Prevent, *Supra* note 8, at 6.

³²⁹ "Kufr." Babylon Dictionary. <http://translation.babylon.com/English/infidel/>

³³⁰ David B. Kopel, *Dhimmitude and Disarmament*, 18 CRLJ 305 (October 18, 2007).

³³¹ People of Dhimma means people of the holy books; Christians and Jews, and other monotheists. This was the status granted to non-Muslims residing in Islamic states. It was developed as a sociolegal status during the expansion of Islam in different parts of the world.

³³² CLINTON BENNETT, *MUSLIMS AND MODERNITY: CURRENT DEBATES* (Continuum 2005) (2005).

³³³ BERNARD LEWIS AND BUNTZIE ELLIS CHURCHILL, *ISLAM: THE RELIGION AND THE PEOPLE* 10 & 20 (Yoram Wind ed., Wharton School Publishing, 2011) (2008). Kopel, *Supra* note 323, at 29. The Dhimmi community enjoyed its respects chiefs, judges, operated under their own family, personal and religious laws.

³³⁴ MARK R. COHEN, *UNDER CRESCENT AND CROSS: THE JEWS IN THE MIDDLE AGES* 74 (Princeton University Press 1944) (1943).

³³⁵ Kopel, *Supra* note 323, at 10. LEWIS, *Supra* note 326.

³³⁶ Interviews, *Supra* note 309. Helbawi provided proof for the freedom of faith, using support from the text, as one example for Islam's instruction to let disbelievers be: "The truth is from your Lord, so whoever wills - let him believe; and whoever wills - let him disbelieve." (18:29)

³³⁷ PREVENT, *Supra* note 8, at art. 7.

³³⁸ *Id.*, at art. 12.

to the celebration of Christmas and Easter.³³⁹ Evidently, any Muslim who have falsely fell under the spell of Western tricks about democracy,³⁴⁰ social cohesion,³⁴¹ nationalism and unity,³⁴² should be rehabilitated and remedied from this *social and moral decline*.³⁴³

In campaigning for the Shari'a Zones, and, again, their interpretation, of Islamic law, members of the group paint a *futuristic* picture of a purely patriarchal society, as drawn by God himself,³⁴⁴ where women are *mothers* and *housewives*. One member's website sought to provide "evidence to prove a woman is for cooking and cleaning".³⁴⁵ In this picture, women are additionally required to have husband's permission to leave the house, refrain from using cosmetics, *tabarujj*, and have a *male* companion in order to leave the country, *mehrem*.³⁴⁶

This scenario represents one perception of the good based on a restrictive application derived by jurists such as Sayyid Qutb, Mohammed Al-Nawawi and Gad El-Haq. It is a model where features of Western *culture* are viewed as "satanic values", and socially integrated Muslims are to be rehabilitated.³⁴⁷ In addition to this model's reflection of significant intolerance of the "other", it reflects the non-belief in behavioral freedom. The apparent *dislike* of Western practices has translated into their classification into Qutb's *jahiliyya* so much so that they will be tolerated. As such, Al-Tahtawi's *behavioural* freedom, along with *cultural* rights, will not be strong features, if at all, in the application of this scenario.

The demand to boycott non-Muslims is a hostile act that drives intolerance to inequality, which results in injustice. This inequality, however, will not apply to non-Muslims alone. After a thorough read of Anjem Choudary's vision of a new 'social system', it becomes clear that non-males will be regarded with inferiority as well; i.e. women. The description of women's role in this model represents a poor understanding of equality, and a strong approval of a social paradigmatic shift towards partiarchism.

The non-integration with non-Muslims encourages adherents of such interpretation to become carriers of discriminatory ideologies that will ultimately, and

³³⁹ *Id.*, at art. 11.

³⁴⁰ *Id.*, at art. 15.

³⁴¹ *Id.*, at art. 12.

³⁴² *Id.*, at art. 1.

³⁴³ *Id.*, at art. 16.

³⁴⁴ Choudary, *Supra* note 313.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ Kern, *Supra* note 3. PREVENT, *Supra* note 8, at art. 16.

immediately, develop a strong negative impact on the social rights of non-Muslims. Unbeknownst to them, these carriers will initiate the achievement of a *mafsad* ("harm"), which is the exact opposite of Shari'a's *maqasid*.³⁴⁸ when state has failed to safeguard the individual's *faith*.

This restrictive interpretation presupposes a certain perception of good that does not necessarily await Abdel Raziq's notion of *agreement* of the Muslim community, certainly not the inferiorized non-Muslim community. Consequently, the ruler, possibly the *caliph* in this situation will rule as he sees fit. This has to remind of Al-Tahtawi's impression of rulers who ruled by *whim*, the lack of freedom that overwhelmed Egypt in the 19th century, versus the justice and equity he witnessed in France at the time. Such a development will cause the deterioration of political and civil freedoms, the people will not be restricted in their political participation; and their rights as citizens will be diminished.

Seeing that rulers and caliphs of such states are tools who guide the masses to apply the will of God, invested in the Shari'a, and protect them from corrupt man-made laws, it becomes difficult, almost naïve, to expect this state to adhere by the universal provision of international human rights; which are essentially man-made laws.

This model promotes the imposition of restrictions on individual freedoms and the equal enjoyment of rights, along with the stripping of equal standing before the law and the subjective optimization of a religion to dominate others. In accordance with the amalgamation tailored in the previous chapter, the aforementioned model, if materialized, will introduce a new status quo where justice, equality, freedom and public interest will become alien principles.

X. The Compromise

Sparked by the intellectual and grounded suggestion of Dr. Rowan Williams in the 2008 lecture, the incorporation of the Shari'a *civil* code is the second scenario to be entertained. Although what Williams justified with evidence and a sense of liberal realism was widely unaccepted and critiqued by many, it still resonated with others who made the effort to emphasize and break down. One such attempt was a subsequent lecture by Lord Phillips. This scenario is an entertainment of both suggestions and concerns inspired by both lecturers' contribution to the debate on English legal tolerance of religious minorities; particularly Islam. While Williams

³⁴⁸ Opwis, *Supra* note 218, at188.

focused his lecture on the role of Shari'a in relation to British law in order to arrive at a midway position between being a citizen and a Muslim, Phillips questioned whether the law treats everyone equally to conclude that English law is pridefully secular, thus it would be difficult for Shari'a to be embraced further.

Dr. Williams started his lecture addressing the concerns and growing fears evoked by the challenges of the dominance of Shari'a.³⁴⁹ He explained how the *universal principles* of Shari'a are *actualized*, as understood by intellectuals and Islamic theologians, and not *ready-made*.³⁵⁰ What is actualized for him and others is that these principles are non-negotiable and that they assume the "voluntary consent or submission of the believer."³⁵¹ In arguing for that conviction, Williams exclaimed the possibility of *ijtihad*, as opposed to the collation of traditional judgments.³⁵² However, the actualizations do differ from one school to the other. The imposition of Shari'a' on everyone and the persistence on the lack of harmony between Islamic law and IHRL is the understanding of *some*. Evidently, many Arab countries promote the belonging to a Muslim community *along with* belonging to political community; Williams himself spoke of Jordan and Morocco, and even the Pakistani state under Jinnah as evidence that memberships in both are not necessarily *coterminous*.³⁵³

The call for the domination of Islam touches upon the debate *regarding secularism v. religious rule*. If both concepts are not coterminous, then it begs the ultimatum of choice. Where a conceptualization based on *citizenship* entails political hegemony, an Islamic-based one designates the divine covenant to be stand-alone.³⁵⁴ Based on the previous scenario, the latter choice is inapplicable for its infringements on entitlements; which are all provoked according to the actualization of *some*. Thus, Williams explained the importance to finding a "just and constructive relationship between Islamic law and the statutory law of the United Kingdom," especially for the sake of the *common good*.³⁵⁵ While the former choice may seem more appealing to religious minorities and other ethnic groups, it is vital to bear in mind that the laws instigated by this system will reflect the predisposition of legislators; whether they are tolerant, welcoming to diversity or discriminatory by nature.³⁵⁶

In compromise of the two mutually exclusive monopolies, Williams touched upon the legitimization of Islamic principles; such as family law, matrimonial affairs

³⁴⁹ Williams, *Supra* note 308, at 1.

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *Id.*

³⁵³ *Id.*

³⁵⁴ *Id.*

³⁵⁵ *Id.*

³⁵⁶ *Id.*

and financial relations.³⁵⁷ He also promoted *transformative accommodation*, which allows an individual to choose his or her own means of jurisdiction and mediation as well.³⁵⁸ This accommodation, he justified, combats social alienation such as *ghettoism* that might cause the disenfranchising of minorities.³⁵⁹

While plausible suggestions, Lord Phillips found implications that beg reconsideration, both on the grounds of sufficient existing toleration, and legal enforceability. Overall, there are 30 parliamentary acts addressing *discrimination* alone in English law.³⁶⁰ Evidently, Muslims are recognized by religion, rather than race.³⁶¹ The regulations concerning payment of mortgages have been modified twice so as not to offend Islamic principles; which regards to paying *riba* ("interest").³⁶² Shari'a courts are allowed to *mediate* conflicts as a peaceful mean of settling disputes.³⁶³ Therefore, Lord Phillips believes that the UK government has already gone a long way to embrace its Muslim community and tailor to its needs.³⁶⁴

On the legal side, Phillips points out implications regarding the *failure to comply* with suggested adjustments to English law. When judges dismiss the religious workings on society in the course of cases with a religious element, not only do they affect -in their rulings- the citizen's entitlements of rights, but also, fail to reinforce the position envisioned by the lawmakers.³⁶⁵ The injunction of Islamic law can be refuted on the merits that complying with some of its implications would create a divide between rights for *citizens* and rights for *Muslims*. Phillips provides the example of *apostasy*, for which the punishment can range from *excommunication*³⁶⁶ to *death*³⁶⁷; depending on the definition and the applied school of thought. As such, penalties provided for in Shari'a cannot be enacted through English courts, and the sanctions befalling the *failure to comply* should rest within the hands of independent

³⁵⁷ *Id.*

³⁵⁸ *Id.*, at 3.

³⁵⁹ *Id.*

³⁶⁰ PHILLIPS, *Supra* note 266, at 3.

³⁶¹ *Id.*, at 5.

³⁶² *Id.*, at 7.

³⁶³ *Id.*

³⁶⁴ *Id.*, at 9.

³⁶⁵ *Id.*, at 1-2.

³⁶⁶ Griffel, *Supra* note 145, at 401-2. Berger, *Supra* note 140, at 25. MAJID KHADDURI, THE ISLAMIC CONCEPTION OF JUSTICE 238-240 (John Hopkins University Press 2002) (1848) Apostates are considered malicious influence hence they are excommunicated. they are legally and socially announced as non-Muslims, and therefore, all their relations to other Muslims are disconnected. For one, they are separated from their spouses by force of law; and they are prohibited from entering into new marriages, even with a non-Muslim. Furthermore, their blood ties with their children are considered non-existent, to and from whom they are prohibited from passing or receiving inheritance – or to and from any Muslim relative.

³⁶⁷ Death was the choice of authorities succeeding the Prophet's death in response to those who went back on Islam as their religion.

judges. One simple answer would be to designate the *governing laws* of any contracts upon their establishment.³⁶⁸ At the core of it, Phillips refutes the application of the rules of one religion over others seeing that the law already safeguards tolerance and mutual respect among *different* people.³⁶⁹

In essence, to arrive at a *just* and *constructive* relationship between both legal systems, it serves to consider providing judges with appropriate legal tools in order to decide on cases with a religious element. The doctrine of *supplemental jurisdiction* is one method to be considered in trying to reach a compromise for the demand of Shari'a incorporation. If instigated by the state, this doctrine would allow for the temporary extension of one court's jurisdiction over all *other* matters and claims related to the case before it.³⁷⁰ In this scenario, it plays to extend an English court's jurisdiction to Shari'a courts so as to have a bigger picture of a dispute before it. Moreover, religious know-how would be accessible to lawyers and judges. Instigating this doctrine would apply to all religious courts, hence, no scales would be tipped in favor of one minority over another.

XI. The Multicultural Fix

The current status quo in UK presents significant resistance to the demand. Muslims comprise only 4.7% of the population,³⁷¹ a significant mainstream of which appreciate the multifaith and multicultural nature of the British society, and do not support the Islamist call for Islamic dominion. Additionally, the interpretation offered by Islamists, as touched upon in the first scenario, has provoked numerous human rights activists to counter-demand the government, and rally the people, not subdue to such fundamentalist assertions.

Through reflections by representatives of the Muslim Council of Britain (MCB)³⁷², both emphasized the minute percentage of the Islamists behind such a demand.³⁷³ With a 1.6 Million Muslim residing in the UK,³⁷⁴ some concentrations are said to behave as Shari'a Zones, one example would be the Tower Hamlets area with a

³⁶⁸ PHILLIPS, *Supra* note 266, at 7.

³⁶⁹ *Id.*

³⁷⁰ *Id.*

³⁷¹ Interviews, *Supra* note 316.

³⁷² The Muslim Council of Britain (MSB) is a national representative Muslim umbrella body with over 500 affiliated national, regional and local organizations, mosques, charities and schools.

³⁷³ Interviews, *Supra* note 316.

³⁷⁴ *Census 2011: Muslims Are Not to Be Feared* (December 19, 2012), available at, http://www.mcb.org.uk/index.php?option=com_content&view=article&id=2254:community-newstemplate&catid=85:community-news&Itemid=37.

71,000 Muslim residents.³⁷⁵ According to Helbawi, who assumed that *all* these residents *approve* of the Zones' project, they would compromise an insignificant 0.12% of the total population.³⁷⁶ While both acknowledge individual rights and entitlements, as Murad clarified, the demand called for is not a concern for the greater Muslim British majority.³⁷⁷

While the board of the MCB did refrain from responding to the rallies and protests by members of the Islamist group, other Muslims took up a more pro-active response and counter-rallied. In response to *Islam4UK*, a group of Muslim youth sought to campaign against the imposition of a *one* interpretation of Shari'a, and also to promote UK multiculturalism. Mr. Inayat Bunglawala, founder of *Muslims4UK*, contributed a long list of writings to promote social cohesion and condemn the fundamentalist hands attempting to dissolve it. Furthermore, Muslims4UK have launched several counter-rallies to promote UK multicultural and multifaith society.³⁷⁸

Of the most active humanitarian groups is the *One Law for All* campaign. Comprised of mostly feminist activists, the campaign contributes in whichever way they can to raise awareness on the human rights hazards and violations if Shari'a law was ever implemented.³⁷⁹ Spokesperson Ann-Marie Waters described:

"Our campaign is against the use of religious laws in family or criminal matters - we believe these areas fundamentally affect people's basic human rights and therefore should be conducted under a single, secular and democratically mandated legal system. This legal system should apply to all people - no distinctions or exceptions for religion or culture. If Muslims are to live their private lives in accordance with Shari'a, that is their right. However, as soon as they begin to impose Shari'a onto another person, it ceases to be a private matter and becomes a matter for public law."³⁸⁰

With this significant counter movement, the current status quo seems approved of and promoted, not just by the Muslim community in the UK, but also by many factions and ideological organizations as well. On this side of the debate, the UK is perceived as a "world-leader in democracy and human rights... a citizen has a

³⁷⁵ *Id.*

³⁷⁶ Interviews, *Supra* note 316.

³⁷⁷ *Id.*

³⁷⁸ Inayat Bunglawala, *Muslims4UK United Against Al-Muhajiroun, EDL and the Daily Express*, available at <http://muslims4uk.org.uk/>.

³⁷⁹ "About One Law for All, available at <http://www.onelawforall.org.uk/about/>.

³⁸⁰ Email Correspondence with Ann Marie Waters, Spokesperson for *One Law for All* (March 8, 2012).

right to live their lives in accordance with their religion. They do not have a right to demand that a state impose that religion - or a specific interpretation of that religion - onto others."³⁸¹ There seems to be strong appreciation of the diversity, justice, equality and freedom safeguarded and promoted by the state.

XII. An Assertion

Britain's first Muslim counter-extremism think-tank was co-founded by Ed Husain; a former Islamic fundamentalist who came to reject extremism after five years of being an operative and a recruiter.³⁸² In a book titled, *The Islamist*, Husain narrated his own journey from a theatre-loving boy to an Islamic fundamentalist, then to a rejecter of such fundamentalism.³⁸³ The turning point at which Husain consciously rejected the beliefsystem of five years, his observations and personal reflections will serve to help have a better understanding the psyche of the people promoting this demand. More so, they will help assert their misguided aim and their non-relevance to the true higher objectives of Islam.

Ed Husain was an active operative; he was recruited by the Young Muslim Organization, then moved to *Hizb ut-Tahrir* ("liberation party").³⁸⁴ The moment Husain's strong belief in Islamic fundamentalism shook to its core was when an innocent's life was wasted: a Christian boy, a colleague of Husain's, lost his life at the hands of Islamists youths after a row over pool tables.³⁸⁵ The realization of the atmosphere he had helped create, where the value of *life* of a non-Muslim had become "of little consequence in attaining Muslim dominance."³⁸⁶ Husain believed the murder was "the direct result of *Hizb ut-Tahrir*'s ideas."³⁸⁷ Moreover, Husain blamed Omar Bakri Muahmmad for the poisonous *hizb* atmosphere created.³⁸⁸ The insignificant value of *life* reflected in this story was only supported by Husain's description of a discussion with a college professor who compared the Nazi ideology of a superior race with that of Islamic fundamentalism.³⁸⁹ At which point, Husain confessed in his book how Islamic fundamentalists (minimally, the ones he encountered) did not look

³⁸¹ *Id.*

³⁸² *Ed Husain: Profile*, available at http://www.penguinstalk.net/ed_husain/.

³⁸³ ED HUSAIN, *THE ISLAMIST*, 288 (Penguin Books Ltd. 2007) (2007).

³⁸⁴ Young Muslim Organization was incepted in 1978, since then it has been working with Muslim youth to engage them socially and educationally and develop them into conscious committed Muslims. YMO UK aims to develop young people that are confident in their *Deen* ("religion") and active in their communities.

Hizb ut-Tahrir is a political party, belonging to an international Wahhabi Islamic political organization.

³⁸⁵ HUSAIN, *Supra* note 378, at 152-3.

³⁸⁶ *Id.*, at 154.

³⁸⁷ *Id.*, at 153.

³⁸⁸ *Id.*, at 154.

³⁸⁹ *Id.*, at 54-5.

back the holocaust as an atrocity.³⁹⁰ This notable sense of intellectual superiority, Husain described, was rooted in the message propagated by such Islamists: *true* Muslims are superior to all others faiths; including and not limited to *partial* Muslimism (defined as ones accepting to abide by man-made laws and integrating with the non-Muslim society).³⁹¹ In the teachings of those fundamentalists, Husain quoted, parents who did not believe in the goal of the organization were *obstacles* in achieving 'God's work'; with which ties should be severed.³⁹²

In that context, non-Muslims are referred to as *kuffar* against which hatred was repeatedly incited. Husain reported being trained to connect local issues with global issues to promulgate a universal hatred towards Muslims and necessitate their unity and struggle against the hostile non-Muslim societies in the world:

"They slaughter us in Bosnia, expel us from our homes in Palestine, and refuse us the basic right to pray in Britain." I would say to students in the corridors. Again, just as the hizb had trained usÖ management [at college] was increasingly perceived as anti-Muslim and racist. At the same time we opened a second front to our confrontation, this time with Sikhs and Hindus.³⁹³

On the inside, Husain shared two very notable observations. The first being the hypocrisy on segregation of the sexes: where a constitutional draft (prepared by a *hizb*) leader strictly forbade the mixing of the sexes in any context.³⁹⁴ Whereas, he reported the non-issue of this prescription in then-current *hizb* meetings; to the extent he questioned the prescription of behavior for Muslims that the *hizb* itself was not adhering to.³⁹⁵

The other, and final, observation Husain made was his comparison between his identification to God, with Faye's (his love interest).³⁹⁶ Coming from the same social, cultural and education background as his family's, Faye was also a devout Muslim, untainted by 'Islamic' associations.³⁹⁶ Towards the end of his fifth year, Husain noted the difference in their perception of God: Faye's God was "close, loving, caring, facilitating, forgiving and merciful."³⁹⁷ Whereas Husain's God was "full of

³⁹⁰ *Id.*

³⁹¹ *Id.*, at 36. In this context, non-Muslims are referred to as *kuffar*.

³⁹² *Id.*, at 41. Husain quoted a YMO member.

³⁹³ *Id.*, at 141.

³⁹⁴ *Id.*, at 133.

³⁹⁵ *Id.*

³⁹⁶ *Id.*, at 149.

³⁹⁷ *Id.*

vengeance, a legislator, a controller and a punisher."³⁹⁸

XIII. Conclusion

Such enlightening experience included significant details that prelude to the mental and intellectual birth of an Islamic fundamentalist. The psyche of whom perceives Islam as a religion with no *justice* or *equality*, with no relevance to the value of *life*, with rationalized severance of *lineage* ties, with no space for *freedom*; all through a more rationalized sense of superiority and authority to others. All of which effectively falls short of the true understanding of Islam and of human rights.

Husain's experience is highlighted to serve as the concluding remarks to be put forth. Had the group promulgated a perception of 'good' that entailed more justice, tolerance, equality or mercy, their project would have been truly of Islamic nature. The problem lies in their misguided use of what is an essentially spiritual relationship, as a tool for political domination. This research had illustrated to different perceptions of Islam, one that adheres to justice and equality of *all*, and another employed to fill intellects and hearts with an artificial of superiority. A person who seeks to pollute others' perceptions with hatred, anger and presumed suffering, is not a Muslim; but a con artist.

At the core, the preliminary demand is far from viable. The last scenario, presumably, would be called for by entirely secularist counter movements such as *One Law for All*; understandably driven by concern over the repercussions of allowing such a rigid interpretation of Shari'a to apply -with particular emphasis to women and children. Of the three scenarios, the incorporation of both civil and criminal branches of Shari'a stands as highly unlikely seeing the small momentum behind the project. The examination of the British system, in terms of both law and society, has highlighted the progression towards the Compromise; i.e. the adoption the civil provisions of Shari'a: growing Islamic financial system and recognition of Sharia' courts.

³⁹⁸ *Id.*

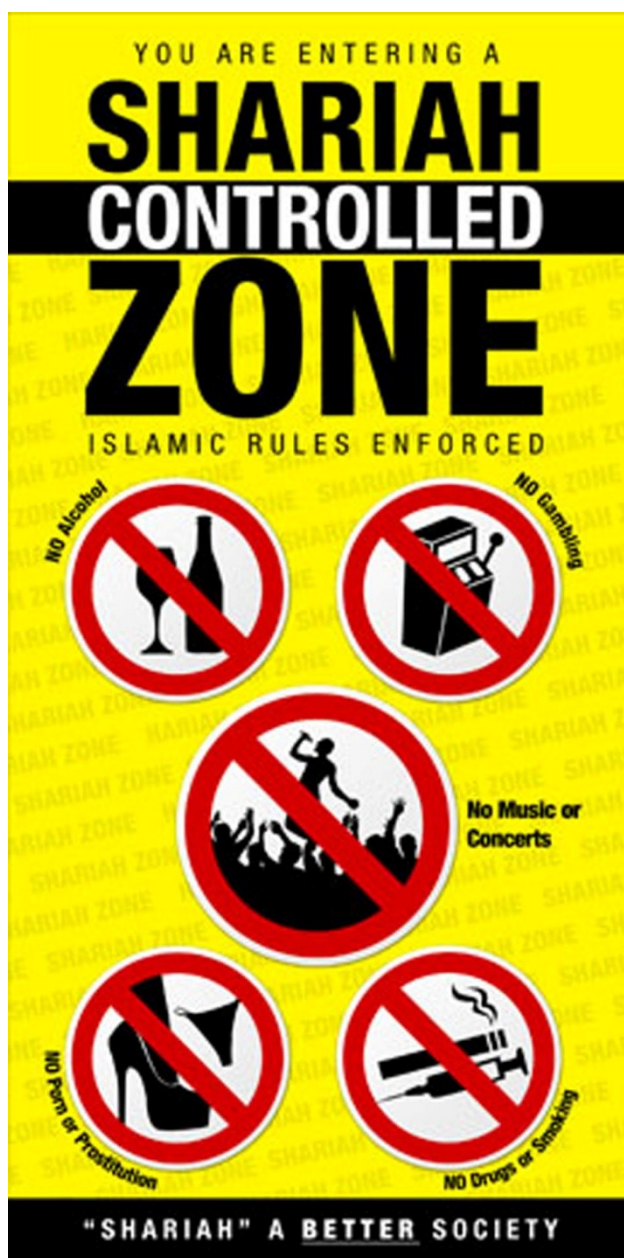


Exhibit A